

May 7, 1999 (5:26PM)

OFFICE OF PROCUREMENT AND ASSISTANCE POLICY

INDEX OF POLICY FLASHES

POLICY FLASH #	TITLE OF FLASH	DATED
	AL-98-05R, Guarantee of Performance	06/11/98
	8(a) Memorandum of Understanding	06/22/98
	Adarand and HUBZone...Recent Developments	07/08/98
	Service Contract Act/Acquisitions of Commercial Items...Recent Developments	07/10/98
#5	Electronic Payment Contractor Information	08/13/98
#6	AL-98-11, Waiver of Synopsis Requirements	09/23/98
#7	Federal Acquisition Circular (FAC) 97-08	
#8	Fourth Biennial Department of Energy Audit Meeting	09/30/98
#9	Guidance for Integrated Contractor Cost Certification Process	10/01/98
#10	Department of Energy Acquisition Regulation (DEAR) Amendments and Acquisition Guide Additions	10/26/98
#11	Department of Defense A-133 Audit Results	10/21/98
#12	Y2K Compliant Information Technology Systems	11/13/98
#13	Federal Acquisition Circular (FAC) 97-09 and Notice of Proposed Rulemaking Addressing Performance Guarantees	12/04/98

May 7, 1999 (5:26PM)

OFFICE OF PROCUREMENT AND ASSISTANCE POLICY

INDEX OF POLICY FLASHES

POLICY FLASH #	TITLE OF FLASH	DATED
#14	FY 99 Energy and Water Development Appropriations Act (Pub. L. 105-245) and the FY 99 Department of Interior and Related Agencies Appropriations Act (Pub. L. 105-277)	12/08/98
#15	Proposed Rule on Financial management Clauses for Management and Operating Contracts	12/08/98
#16	HUBZone Empowerment Contracting	12/29/98

5/7/99:dkf: D:\My Documents\wpdocs\New Folder\Policy Flashes\1998 Index of Flashes.wpd



Headquarters Policy Flash

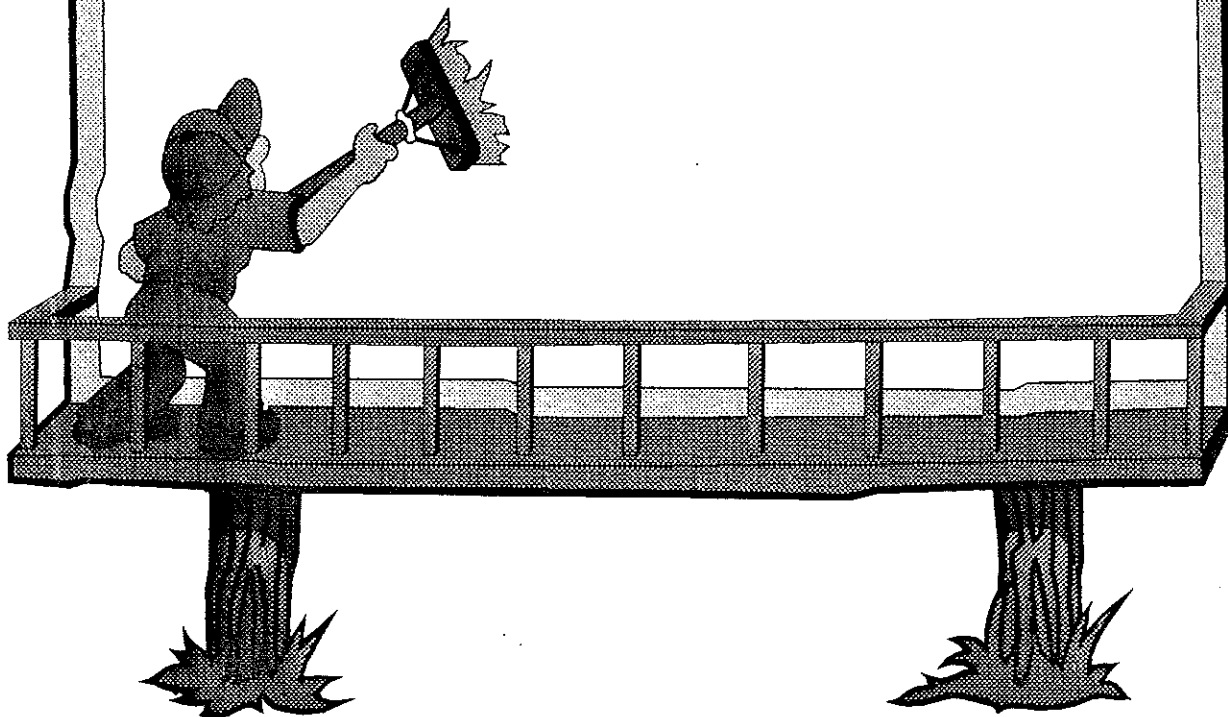
Flash #15

16

DATE: December 29, 1998
TO: Distribution
FROM: Office of Procurement and Assistance Policy (MA-51)
Office of Procurement and Assistance Management

SUBJECT: HUBZone Empowerment Contracting

SUMMARY: On Dec 18, 1998, Federal Acquisition Circular 97-10 was published in the Federal Register. FAC 97-10 contains the interim rule (63 FR 70265) implementing the Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program. The interim rule changes to the FAR are effective January 4, 1999.

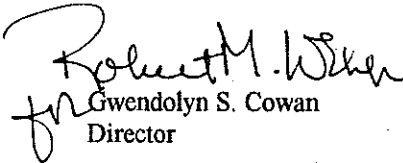


Flash # 16

The rule provides for:

1. HUBZone 8(a) awards (see 19.800(d))
2. HUBZone set-asides (see 19.1305)
3. HUBZone sole source awards (see 19.1306) without a full justification for other than full and open competition (see 6.302-5(b)(6))
4. A price evaluation preference (PEP) for HUBZone small business concerns (see 19.1307)
5. Inclusion of HUBZone goals in small business subcontracting plans (see 19.7) when the revised Small Business Subcontracting Plan clause (see 52.219-9) is included in a contract.

DOE contracting officers may authorize major facilities management contractors to use HUBZone set-aside and HUBZone sole source procurement techniques in the award of subcontracts under conditions similar to those applicable to the award of Federal prime contracts.


for Gwendolyn S. Cowan
Director

cc: Richard Hopf, MA-5
Ed Lovett, MA-5
Steve Mournighan, MA-52
Ed Simpson, MA-52

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(See reverse side for instructions)

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Director
Office of Procurement and Assistance
Policy, MA-51

7. OFFICIAL BUSINESS

(TIME)

A.M.

P.M.

8. DATE

January 4, 1999

9. TO

PROCUREMENT DIRECTORS OPERATIONS OFFICES

3300(33)(A)

COMMUNICATION CENTER ROUTING

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AOn December 29, 1998, Headquarters Policy Flash #16 was issued, titled
"HUBZone Empowerment Contracting." The number on page one inadvertently
cited "Flash # 15." The correct number is Flash # 16 as stated on page two.

BE BRIEF - ELIMINATE UNNECESSARY WORDS

10. ORIGINATOR (On separate lines, enter
Name, Routing Symbol, & Tel. No.)Gwendolyn S. Cowan
MA-51
(202) 586-8182
hlw

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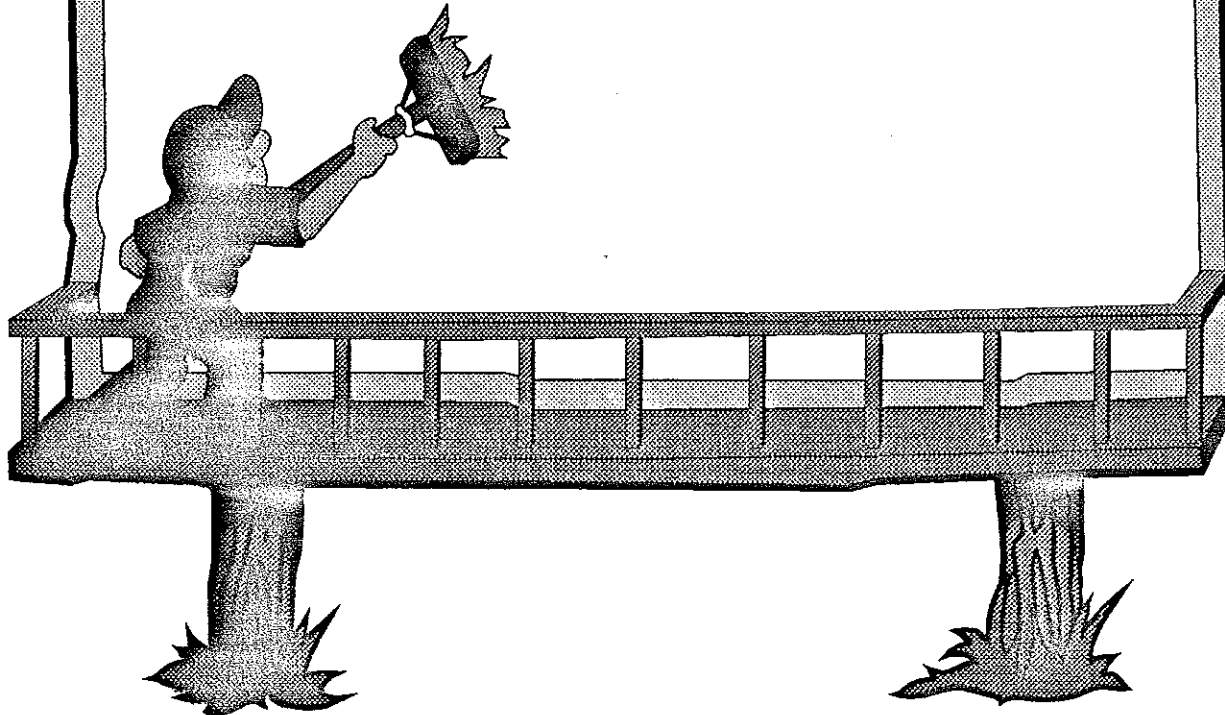
Headquarters Policy Flash

Flash #15

DATE: December 8, 1998
TO: Distribution
FROM: Office of Procurement and Assistance Policy (MA-51)
Office of Procurement and Assistance Management

SUBJECT: **Proposed Rule on Financial Management Clauses for Management and Operating Contracts**

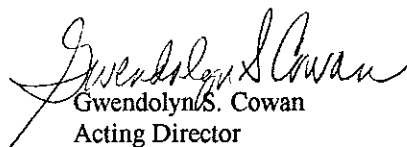
SUMMARY: On November 18, 1998, DOE published a proposed rule on Financial Management Clauses for Management and Operating (M&O) Contracts in the Federal Register (at 64024 to 64031). This proposed rule would amend the Department of Energy Acquisition Regulation (DEAR) to designate certain M&O




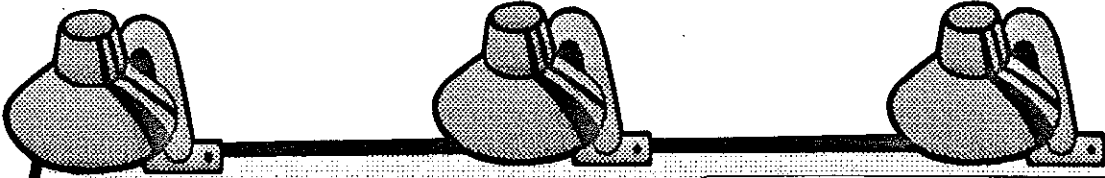
Flash #15

contract clauses and Federal Acquisition Regulation clauses as Standard Financial Management Clauses to be included in M&O contracts unless the Chief Financial Officer of the Department (CFO) concurs in a deviation. Additionally, this proposed rule would revise several existing financial management clauses and add other financial management related clauses.

Please review the proposed rule and send comments by January 19, 1999. Our plan is to finalize the rule quickly so that deviations to the affected clauses will no longer be necessary. It is important that you take this opportunity to advise us where clause language needs to be more flexible so that deviations do not need to be requested. The requirement to obtain CFO concurrence is still necessary in accordance with Acquisition Letter (AL) 93-2. However, the clause language in the proposed rule may be used in lieu of the text included in the AL. We will officially cancel the AL when the rule goes final.


Gwendolyn S. Cowan
Acting Director

cc: Richard Hopf, MA-5
Ed Lovett, MA-5
Steve Mournighan, MA-52
Ed Simpson, MA-52



Headquarters Policy Flash

Flash # 14

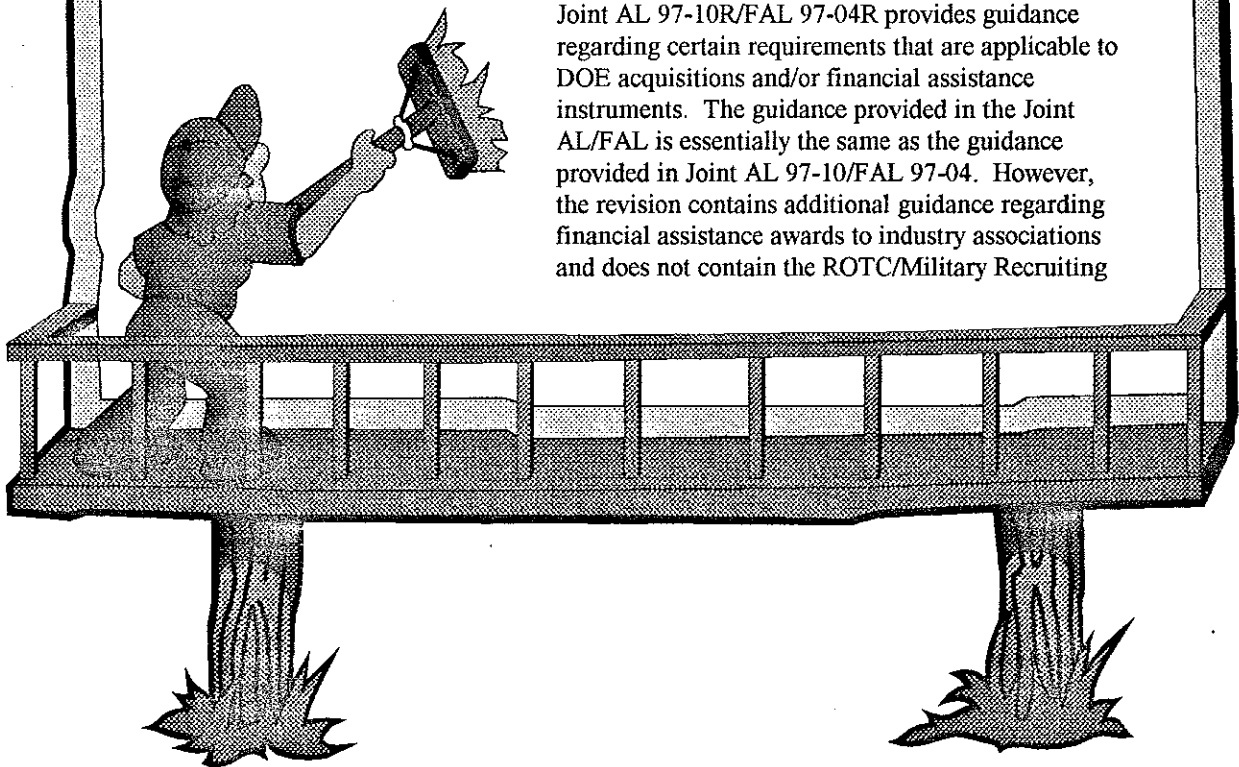
DATE: December 8, 1998
TO: Distribution
FROM: Office of Procurement and Assistance Policy (MA-51)
Office of Procurement and Assistance Management

SUBJ: **FY 99 Energy and Water Development Appropriations Act (Pub. L. 105-245) and the FY 99 Department of Interior and Related Agencies Appropriations Act (Pub. L. 105-277)**

On November 20, 1998, Acquisition Letter (AL) 98-02R and Joint Acquisition Letter (AL) 97-10R/Financial Assistance Letter (FAL) 97-04R were issued.

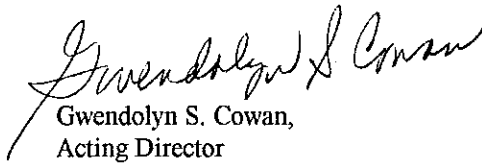
AL 98-02R provides guidance regarding the implementation of Sections 301, 302, 305 and 307 of Pub. L. 105-245 as they pertain to DOE acquisitions. Sections 301, 302 and 305 of Pub. L. 105-245 are carried-over from the Energy and Water Development Appropriations Act, 1998 (Pub. L. 105-62); whereas, Section 307 of Pub. L. 105-245 provides new authorities concerning the funding of multi-year contracts entered into by DOE.

Joint AL 97-10R/FAL 97-04R provides guidance regarding certain requirements that are applicable to DOE acquisitions and/or financial assistance instruments. The guidance provided in the Joint AL/FAL is essentially the same as the guidance provided in Joint AL 97-10/FAL 97-04. However, the revision contains additional guidance regarding financial assistance awards to industry associations and does not contain the ROTC/Military Recruiting



Access to Campus requirement or the prohibition on awards to contractors who have not filed their annual report concerning the employment of certain veterans – these provisions were not included in the FY 99 legislation.

If you would like more information, please contact John Bashista on (202) 586-8192 regarding AL 98-02R, or Trudy Wood on (202) 586-5625 regarding Joint AL 97-10R/FAL 97-04R.



Gwendolyn S. Cowan,
Acting Director

Attachments

1. AL 98-02R
2. Joint AL 97-10R/FAL 97-04R

cc: R. Hopf, HR-5
E. Lovett, HR-5
S. Mournighan, HR-52
E. Simpson, HR-52
S. Michelsen, HR-53



Department of Energy
Acquisition Regulation

No. 98-02R
Date 11/20/98

ACQUISITION LETTER

AUTHORITY

This Acquisition Letter is issued by the Procurement Executive pursuant to a delegation from the Secretary and under the authority of the Federal Acquisition Regulation (FAR), Section 1.301(a)(2).

CONTENT

CITATION

Chapter 1, Acquisition Guide
FAR 1.4
DEAR 917.6
DEAR 970.1702-1
DEAR 970.5202

TITLE

Acquisition Regulations System
Deviations from the FAR
Management and Operating Contracts
Term of contract and option to extend
Deviations

Subject: FY 99 Energy and Water Provisions

- I. **Purpose.** The purpose of this Acquisition Letter (AL) is to provide guidance regarding the implementation of Sections 301, 302, 305 and 307 of the Energy and Water Development Appropriations Act, 1999, Pub. L. 105-245, which was enacted on October 7, 1998.
- II. **Applicability.** The guidance set forth in this AL with respect to sections 301, 302, and 305 is applicable to actions which are funded under Pub. L. 105-245, and any prior appropriations Act. However, the guidance provided with respect to section 307 is applicable to actions funded under Pub. L. 105-245. This guidance is not applicable to actions which are funded under Public Laws enacted subsequent to Pub. L. 105-245, including legislation making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1999, under which certain Departmental programs are funded. Detailed guidance regarding the scope of Sections 301, 302, 305 and 307 is set forth in paragraph IV. below.
- III. **Background.** Sections 301, 302 and 305 of Pub. L. 105-245 are carried-over from the Energy and Water Development Appropriations Act, 1998 (Pub. L. 105-62); whereas, Section 307 of Pub. L. 105-245 provides new authorities concerning the funding of multi-year contracts entered into by the Department of Energy (DOE). The following is a summary of these provisions:

Section 301 prohibits the use of funds appropriated under Pub. L. 105-245, or any prior appropriations Act, to award or extend a management and operating (M&O) contract unless the contract or extension is awarded using competitive procedures, or the Secretary of Energy

authorizes, on a case-by-case basis, the use of other than competitive procedures. This requirement parallels the current DOE policy set forth at DEAR 917.602 of providing for full and open competition in the award and extension of M&O contracts, and requiring a justification and Secretarial authorization when such awards are made without providing for full and open competition. However, Section 301 also requires that the Department submit a report which includes reasons for the action to the Subcommittees on Energy and Water Development of the Committees on Appropriations of the House of Representatives and the Senate at least 60 days prior to the award or modification of an M&O contract for which the Secretary intends to authorize the use of other than competitive procedures.

Section 302 prohibits the use of funds appropriated under Pub. L. 105-245, or any prior appropriations Act, to award or modify any DOE contract (i.e., both M&O and non-M&O) which contains a deviation from a provision or clause prescribed by the Federal Acquisition Regulation (FAR), unless the Secretary of Energy authorizes, on a case-by-case basis, such a deviation. This provision also requires that the Department notify the Subcommittees on Energy and Water Development of the Committees on Appropriations of the House of Representatives and the Senate at least 60 days prior to the award or modification of a DOE contract which contains a provision or clause which deviates from that prescribed in the FAR, and the reasons therefore.

Section 305 prohibits the use of funds appropriated under Pub. L. 105-245, or any prior appropriations Act, to prepare or initiate requests for proposals (RFP) for goods or services in support of a program if the program has not been funded by Congress.

Section 307 permits the Department to enter into multi-year contracts using funds appropriated under Pub. L. 105-245 without obligating the estimated costs associated with any necessary cancellation or termination of the contract. This provides the DOE with the same flexibility provided to the Department of Defense. This provision specifically exempts the Department from the statutory requirement set forth at 41 U.S.C. section 254c(a) which otherwise requires such obligations for multi-year contracts entered into by civilian agencies.

IV. Guidance.

A. Use of Other Than Competitive Procedures for M&O Contracts and Extensions (Sec. 301)

1. Scope: This guidance applies to new M&O contracts, and modifications which extend an M&O contract beyond the term provided for in the contract (except as noted below) that are awarded without providing for full and open competition in accordance with the policies and procedures set forth at DEAR 917.602(b) and FAR Subpart 6.3. The requirements of Section 301, and the guidance set forth herein, do not apply to the exercise of an option in accordance with DEAR 970.1702-1.

2. Procedures:

a. The justification and Secretarial authorization required by DEAR 917.602(b) will address and satisfy the Secretarial authorization requirements of Section 301 for new M&O contracts and extensions that are awarded without providing for full and open competition.

b. The Office of Management Systems will review and process the justification for Secretarial authorization, and will coordinate, for approval by the Secretary, the written notification to the Subcommittees on Energy and Water Development of the Committees on Appropriations of the House of Representatives and the Senate as soon as practicable following the Secretarial authorization required by DEAR 917.602(b), but not later than 60 days prior to the award or modification of an M&O contract that is subject to the requirements of Section 301.

B. Deviations From Provisions and Clauses Prescribed By The FAR (Sec. 302)

1. Scope: This guidance applies to the use of solicitation provisions and contract clauses that deviate from solicitation provisions or contract clauses that are prescribed by the FAR. The requirements of Section 302, and the guidance set forth herein, do not apply to the use of the following in DOE solicitations, contracts, or modifications because they do not constitute deviations from the FAR:

- ▶ Provisions and clauses prescribed in DEAR Parts 952 and 970, including any deviations, or modifications thereto which are authorized in accordance with the policies and procedures set forth in FAR Subpart 1.4, and internal DOE procedures;
- ▶ Provisions and clauses prescribed by local policies and procedures, as long as such provisions and clauses are not inconsistent with provisions and clauses prescribed by the FAR for use in the immediate contract or modification;
- ▶ Provisions and clauses prescribed in the FAR which have been modified in accordance with FAR 52.104;
- ▶ Provisions and clauses prescribed in the FAR with their alternate(s) in accordance with FAR 52.105; and
- ▶ FAR provisions and clauses which are otherwise not prescribed for the particular contract or modification in which the provisions or clauses will be used.

2. Procedures:

a. For all DOE solicitations/contracts, including M&O contracts, deviations from FAR solicitation provisions or contract clauses that are to be incorporated into a DOE solicitation or contract shall be made only in accordance with the deviation procedures set forth at FAR

AL 98-02 (11/20/98)

Subpart 1.4 and internal Departmental procedures. The baseline for determining deviations is the version of the provision or clause that is prescribed in the FAR at the time of award.

b. To ensure consistency with the definitions and requirements prescribed by the FAR pertaining to deviations from, and modifications to, standard solicitation provisions and contract clauses, a technical amendment to the DEAR was recently issued to amend section 970.5202, Deviations. Accordingly, deviations from, and modifications to, the standard solicitation provisions and contract clauses prescribed in FAR Part 52 and DEAR Parts 952 and 970 for use in DOE contracts shall be made only in accordance with the deviation procedures of FAR subpart 1.4 and internal Departmental procedures.

c. Requests to deviate from a FAR provision or clause pursuant to FAR Subpart 1.4, as described above, shall be submitted to the Office of Management Systems in accordance with the procedures and documentation requirements set forth in Chapter 1 of the DOE Acquisition Guide. These procedures state that deviation requests that are submitted to the Office of Management Systems must include certain types of information, including the identification of the specific FAR clause, the reason why the deviation is necessary, and a description of the intended effect of the deviation. This information shall include a line-in/line-out comparison of the provision or clause prescribed by the FAR with the version containing the desired deviation.

d. Heads of Contracting Activities shall ensure that FAR deviation requests are submitted to the Office of Management Systems as soon as possible after the need is identified and, where practicable, not later than 120 days prior to the award of a contract or modification that is subject to Section 302.

e. The Office of Management Systems will review and process the request for Secretarial authorization, and will coordinate the written notification to the Subcommittees on Energy and Water Development of the Committees on Appropriations of the House of Representatives and the Senate for signature by the Secretary as soon as practicable following Secretarial authorization, but not later than 60 days prior to the award or modification of a DOE contract that is subject to the requirements of Section 302.

C. Preparation and Issuance of RFP's For Unfunded Programs (Sec. 305)

1. Scope: This guidance applies to Departmental initiatives proposed as budget line-item programs for which Congress has specifically denied funding in enacting Pub. L. 105-245, or any prior appropriations Act (e.g., the *Nuclear Security Program*, which Congress declined to fund under Pub. L. 105-62, and which was a budget line-item under the broader budget category of *Nuclear Energy Programs*). This guidance also applies to any program that Congress explicitly has declined to fund in enacted bill language, whether or not it is a budget line-item program.

Section 305 does not preclude DOE from issuing RFPs subject to the availability of funds (e.g., see FAR 32.703-2), as long as the RFP is not in support of a program for which Congress has, as described above, specifically denied funding under Pub. L. 105-245, or any prior appropriations Act.

2. Procedures:

a. DOE Program/Project Managers and Budget Officials shall not initiate/certify procurement requests for goods or services that are in support of a program for which funding has been specifically denied by Congress under Pub. L. 105-245, or any prior appropriations Act, as described above.

b. DOE contracting activities shall not prepare or issue RFPs, including draft RFPs, for goods or services in support of a program requirement for which funds have not been properly certified by the designated authorities as appropriate and available for the requirement.

D. Multi-Year Contract Funding (Sec. 307)

1. Scope: This guidance applies to multi-year contracts entered into by DOE in accordance with FAR Subpart 17.1 using funds appropriated under Pub. L. 105-245.

2. Procedures: Notwithstanding the requirements of 41 U.S.C. section 254c(a), funds appropriated by Pub. L. 105-245 may be used to enter into multi-year contracts for the acquisition of property or services without obligating the estimated costs associated with any necessary cancellation or termination of the contract. The costs of termination or cancellation may be paid from:

- ▶ appropriations originally available for the performance of the contract concerned;
- ▶ appropriations currently available for procurement of the type of property or services concerned, and not otherwise obligated; or
- ▶ funds appropriated for those payments.

V. Effective Date. This AL is effective on the date of its issuance.

VI. Expiration Date. September 30, 1999, or such later date as awards utilizing funds from the Energy and Water Development Appropriations Act, 1999, or prior appropriations Acts may be made.



Department of Energy
Acquisition and Assistance Regulations

AL No. 97-10R
FAL No. 97-04R
Date 11/20/98

ACQUISITION/FINANCIAL ASSISTANCE LETTER

AUTHORITY

This joint Acquisition/Financial Assistance Letter (AL/FAL) is issued pursuant to a delegation of authority from the Secretary.

Subject: FY 99 Energy and Water/Interior (Grants and Contracts)

- I. Purpose.** The purpose of this joint AL/FAL is to provide guidance regarding certain requirements applicable to acquisition and financial assistance instruments that are set forth in the Energy and Water Development Appropriations Act, 1999, Pub. L. 105-245 (Energy & Water Act), which was enacted on October 7, 1998, and the Department of Interior and Related Agencies Appropriations Act, Section 101 (e) of Division A of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105-277 (Interior Act), which was enacted on October 21, 1998.
- II. Applicability.** In general, the guidance set forth in this AL/FAL is applicable to contracts and financial assistance instruments that are awarded by the Department using appropriations made available under the Energy & Water Act and the Interior Act. Moreover, certain of these requirements apply to subcontracts awarded under DOE prime contracts, as well as purchases made by recipients under DOE financial assistance instruments. Detailed guidance regarding the scope of the requirements set forth in these statutes, as well as implementing procedures, are provided in paragraph IV below.
- III. Background.** The guidance provided in this AL/FAL is essentially the same as the guidance provided in joint AL No. 97-10/FAL No. 97-04, except it contains some additional guidance regarding financial assistance awards to industry associations and does not contain the ROTC and Military Recruiting Access to Campus requirement or the prohibition on awards to contractors who have not filed their annual report regarding employment of certain veterans. Paragraphs IV, A and B apply to both DOE prime contracts and financial assistance awards. Paragraphs IV, C and F apply only to DOE financial assistance. Paragraph D applies to DOE prime contracts, and subcontracts thereunder. Paragraph IV, E applies only to DOE prime contracts. The guidance in this AL/FAL results from the following statutory requirements

AL 97-10R/FAL 97-04R (11/20/98)

Lobbying Restrictions (Energy & Water §501/Interior §303)

The Energy & Water Act prohibits the use of funds appropriated in the Act, either directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in section 1913 of title 18, United States Code. The Interior Act prohibits the use of funds appropriated under the Act for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete.

Purchase of American-Made Equipment and Products--Sense of Congress (Energy & Water §502(a) & (b)/Interior §307(b))

These provisions provide that it is the sense of Congress that all equipment and products purchased with funds made available from the Energy & Water Act or the Interior Act should be American-made. The Energy & Water Act provision applies to both contracts and financial assistance instruments. The Interior Act provision applies only to financial assistance instruments.

Compliance with Buy American Act (Interior §307(a))

This provision provides that none of the funds made available under the Interior Act may be expended by an entity unless the entity agrees that in expending the funds the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c; popularly known as the "Buy American Act").

Prohibition of Contracts with Persons Falsely Labeling Products as Made In America (Energy & Water §502(c)/Interior §307(c)).

These provisions prohibit the award of contracts and subcontracts to persons who falsely label products as made in America. Persons determined to have intentionally affixed such a false label, or any inscription with the same meaning, will be considered for debarment pursuant to FAR 9.406-2(a)(4) and 9.406-2(b)(1)(iii).

Consulting Contracts As Public Records (Interior §301)

This provision prohibits the use of funds made available under the Interior Act for consulting contracts pursuant to 5 U.S.C. 3109 unless such contracts are a matter of public record and are available for public inspection.

Inappropriate Use of Appropriated Funds (Energy and Water Conference Report 105-245)

The report provides guidance on the appropriate use of funds for DOE financial assistance awards to industry associations. The conferees conclude that, as a general rule, appropriated funds should not be used to underwrite the operating expenses of industry associations and that the Department should compete its financial assistance awards for information dissemination and outreach activities conducted by trade associations and use merit review procedures.

IV. Guidance.

A. Lobbying Restrictions

1. Scope: This guidance applies to all solicitations and awards of DOE contracts and financial assistance instruments under which funds appropriated in either the Energy & Water Act or the Interior Act are obligated.
2. Procedures: The following clauses shall be incorporated into applicable solicitations and awards of DOE contracts and financial assistance instruments where the expenditure of funds is made available under the Energy & Water or Interior Acts.

**LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT
APPROPRIATIONS ACT, 1999)**

The contractor or awardee agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

(End of Clause)

**LOBBYING RESTRICTION (DEPARTMENT OF INTERIOR & RELATED AGENCIES
APPROPRIATIONS ACT, 1999)**

The contractor or awardee agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

(End of Clause)

B. Purchase of American-made Equipment and Products—Sense of Congress.

1. **Scope:** This guidance applies to all solicitations and awards of DOE contracts and financial assistance under which funds appropriated in the Energy & Water Act are obligated. This guidance also applies to solicitations and awards of financial assistance under which funds appropriated in the Interior Act are obligated (*This guidance is not applicable to contracts under which funds appropriated in the Interior Act are obligated*).

2. **Procedures:** The following notice shall be incorporated into applicable solicitations and awards of DOE contracts and financial assistance instruments using funds appropriated under the Energy & Water Act. The notice shall also be included in solicitations and awards of financial assistance instruments using funds appropriated under the Interior Act.

NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS—SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

C. Compliance with Buy American Act

1. **Scope:** This guidance applies to all solicitations and awards of DOE financial assistance under which funds appropriated in the Interior Act are obligated.

2. **Procedures:** The following clause shall be incorporated into applicable financial assistance solicitations and awards.

COMPLIANCE WITH BUY AMERICAN ACT

In accepting this award, the recipient agrees to comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a - 10c, popularly known as the "Buy American Act"). The recipient should review the provisions of the Act to ensure that expenditures made under this award are in accordance with it.

(End of Clause)

D. Prohibition of Contracts with Persons Falsely Labeling Products as Made in America

1. **Scope:** This guidance applies to all DOE contracts, and subcontracts thereunder, under which funds appropriated in either the Energy & Water Act or the Interior Act are obligated.

2. Procedures:

- a. Pursuant to FAR 9.405(a), awards shall not be made to entities that are included on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
- b. If DOE, or DOE contractor personnel become aware of a possible violation of the prohibition against falsely mislabeling products as made in America, and the entity is not on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, the matter should be promptly reported through the DOE contracting officer to the Office of Management Systems, Office of Procurement and Assistance Management, for potential debarment of the entity pursuant to FAR 9.406-2(a)(4) and 9.406-2(b)(1)(iii).

E. Consulting Contracts As Public Records

1. Scope: This guidance applies to awards of DOE prime contracts for consulting services pursuant to 5 U.S.C. 3109 using funds appropriated in the Interior Act.
2. Procedures: Pursuant to the Freedom of Information Act (5 U.S.C. 552), as implemented in the Federal Acquisition Regulation at Part 24 and the Department of Energy's Freedom of Information Act Regulation at 10 CFR 1004, prime contracts are a matter of public record and are to be made available for public inspection upon request. Accordingly, these existing statutory and regulatory requirements would preclude violation of the prohibition set forth in Section 301 of the Interior Act.

F. Financial Assistance Awards to Industry Associations

1. Scope: This guidance applies to all awards of DOE financial assistance to industry associations under which funds appropriated in the Energy & Water Act are obligated.
2. Procedures:
 - a. Prior to making any award to an industry association, the DOE contracting officer shall ensure that the funds are provided for discrete tasks which accomplish a public purpose of support or stimulation and not for the principal purpose of paying the association's operating costs.
 - b. Overhead and general and administrative type-expenses incurred by industry associations as the result of conducting such discrete tasks may be reimbursed in accordance with the Government-wide rules for financial assistance.
 - c. The objective merit review policy stated at 10 CFR 600.13 applies to all discretionary financial assistance awards, including awards to industry associations.

AL 97-10R/FAL 97-04R (11/20/98)

d. Financial assistance activities for information dissemination and outreach activities conducted by industry associations shall be competed, to the greatest extent practicable. Any non-competitive award must satisfy the procedures established by the Department for non-competitive financial assistance.

- V. Effective Date.** This joint AL/FAL is effective upon its date of issuance shown on page 1.
- VI. Expiration Date.** September 30, 1999 or such later date as awards utilizing funds from the Energy & Water Development Appropriations Act, 1999, or the Department of the Interior and Related Agencies Appropriations Act, 1999 may be made and until the completion of any portion of such awards utilizing funds from those appropriations.

.. INSERT ABOVE, CLASSIFICATION LEVEL, UNCLASSIFIED, OR OFFICIAL USE ONLY

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NR: DTG: Z

Gwendolyn S. Cowan
Acting Director
Office of Procurement and
Assistance Policy, MA-51

(TIME)

A.M.

P.M.

8. DATE

December 8, 1998

9. TO

COMMUNICATION CENTER ROUTING

PROCUREMENT DIRECTORS OPERATIONS OFFICES

3300(33)(A)

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10. ORIGINATOR (On separate lines, enter Name, Routing Symbol, & Tel. No.)

Gwendolyn S. Cowan
MA-51
(202) 586-8182

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DERIVATIVE
CLASSIFIER _____
(Name and Title)

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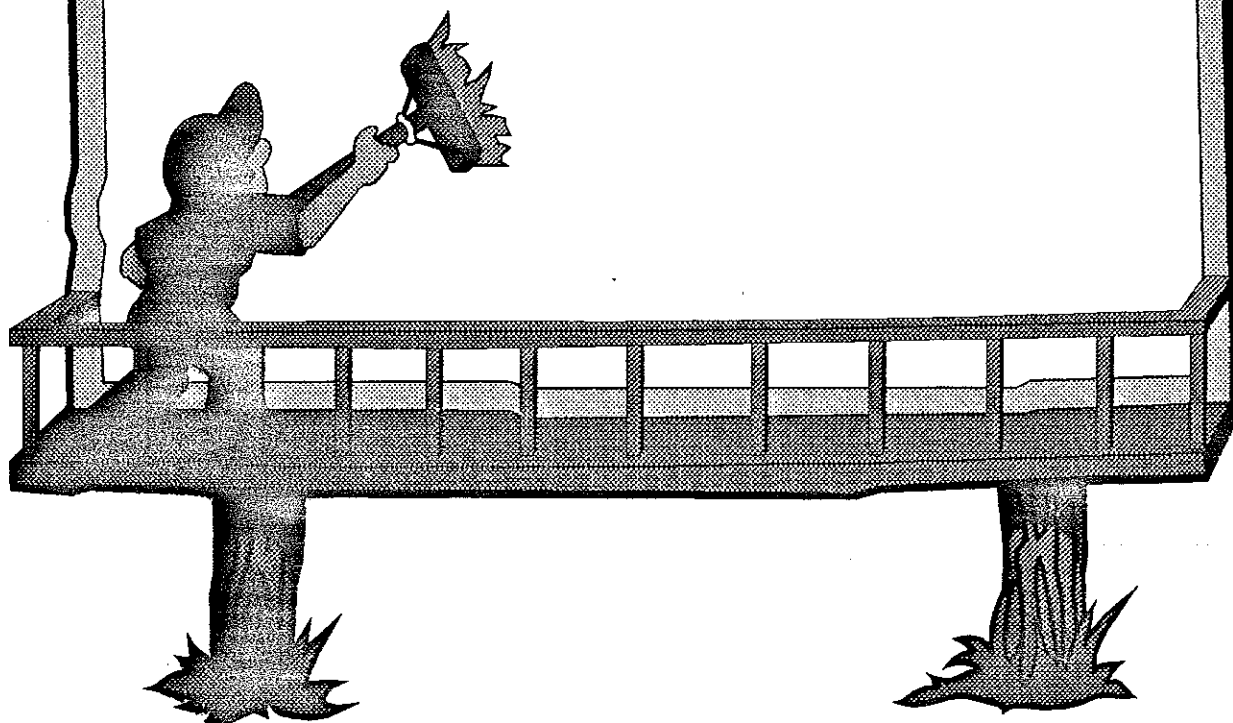
Headquarters Policy Flash

Flash #13

DATE: December 4, 1998
TO: Distribution
FROM: Office of Procurement and Assistance Policy (MA-51)
Office of Procurement and Assistance Management

SUBJECT: **Federal Acquisition Circular (FAC) 97-09 and
Notice of Proposed Rulemaking Addressing Performance Guarantees**

SUMMARY: This Flash provides a summary of the 10 items included in the recently issued FAC 97-09, and a brief description of a Notice of Proposed Rulemaking addressing performance guarantees.



Flash #13

FAC 97-09

The following 10 items are included in FAC 97-09:

1. Taxpayer Identification Numbers

This interim rule amends FAR Parts 1, 4, 13, 14, 15, and 52 to implement Subsection (i) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) and Section 1022 of the Taxpayer Relief Act of 1997 (Pub. L. 105-32). The rule clarifies requirements for obtaining Taxpayer Identification Number (TIN) information from contractors and forwarding the information to payment offices; specifies that TIN information may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government; and clarifies and updates requirements for reporting contract information and payment information to the Internal Revenue Service.

2. Electronic Commerce

This interim rule revises FAR Subpart 4.5 and makes associated changes to FAR Parts 2, 5, 13, and 14, to implement Section 850 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) to eliminate the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network. In addition, this interim rule promotes the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems.

3. Alternative Dispute Resolution (ADR)

This final rule amends FAR 6.302-3, 24.202, 33.2, and the clause at 52.233-1 to implement the Administrative Dispute Resolution Act of 1996 (Pub. L. 104-320) and Section 4321(a)(7) of the Clinger-Cohen Act of 1996 (Pub. L. 104-106). The rule makes clear the authority to contract with a neutral person as an exception to requirements for full and open competition; revises requirements for certification of a claim under the Administrative Dispute Resolution Act to conform to the requirements under the Contract Disputes Act; and specifies that certain dispute resolution communications are exempt from disclosure under the Freedom of Information Act.

Specific changes include: defining the term Alternative Dispute Resolution at section 33.20, where before the term was not defined; adding paragraphs (f) and (g) which provide (1) that arbitration may not be made a condition of contract award unless required by statute; (2) that an agreement to use arbitration shall be in writing and specify the maximum award that "may be issued by the arbitrator;" and (3) that binding arbitration may be agreed to only in accordance with agency regulations; adding paragraph (g) to the clause at 52.233-1, entitled "Disputes," providing that the parties mutually agree to use alternative dispute resolution and that if the contractor refuses the Contracting Officer's offer of ADR, it shall specify in writing the reasons therefor.

Acquisition Letter 94-22R on the subject of Alternative Disputes Resolution, dated April 14, 1995, will not be further amended specifically as a result of these changes to the FAR.

Flash #13

There are currently no DOE implementing regulations that would result in the use of binding arbitration as discussed in item (3) of the second summary paragraph. At such time as those regulations are forthcoming, their existence and effect on the procurement process will be communicated by Flash or Acquisition Letter.

4. Pay-As-You-Go Pension Costs

The interim rule published as Item I of FAC 84-44 is converted to a final rule with amendments at FAR 15.408, 31.001, 31.205-6, and the clause at 52.215-15. The rule amends the FAR for consistency with 48 CFR 9904.412, Cost accounting standard for composition and measurement of pension cost (CAS 412), and 48 CFR 9904.413, Adjustment and allocation of pension cost (CAS 413). CAS 412 and CAS 413 relate to accounting for pension costs under negotiated Government contracts.

5. Rehabilitation Act, Workers With Disabilities

The interim rule published as Item V of FAC 97-05 is converted to a final rule without change. The rule implements Department of Labor regulations at 41 CFR 60-741 regarding affirmative action to employ, and advance in employment, qualified individuals with disabilities.

6. Civil Defense Costs

This final rule deletes the civil defense cost principle at FAR 31.205-5, as this guidance is no longer deemed necessary. The acceptability of civil defense costs will remain governed by the allocability, allowability, and reasonableness criteria discussed in FAR Part 31.

7. Costs Related to Legal/Other Proceedings

This final rule amends FAR 31.205-47, Costs related to legal and other proceedings, to clarify the allowability of costs incurred for qui tam suits in which the Government does not intervene. This rule is consistent with audit guidance issued by the Defense Contract Audit Agency on August 24, 1995. Certain Government contracting personnel and contractors may have had common misinterpretations of the language at FAR 31.205-47 prior to August 24, 1995. For qui tam legal fees incurred prior to August 24, 1995, if the Government contracting personnel and the contractor shared a common misinterpretation of the language at FAR 31.205-47, the contracting officer, in consultation with his or her legal advisors, should determine the appropriate treatment of those costs on a case-by-case basis.

8. Service Contracts

This final rule revises FAR 32.703-3 and amends 37.106 to implement Section 801 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85). Section 801 provides that the Secretary of Defense, the Secretary of a military department, or the Secretary of Transportation with respect to the Coast Guard, when it is not operating as a service in the Navy, may enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year. This authority remains the same for civilian agencies other than NASA.

Flash #13

9. Payment Due Dates

This final rule amends FAR Subpart 32.9 to clarify that agencies may amend the clauses at FAR 52.232-25, Prompt Payment, and 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, to specify a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

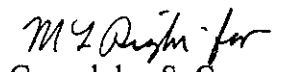
10. Technical Amendments

Amendments are being made at sections 1.106, 6.302-3, 14.205-1, 14.407-4, 15.404-1, 19.102, 19.1004, 32.705-1, 33.104, 36.601-4, 41.103, 52.212-5, 52.244-6, and 53.228 in order to update references and make editorial changes.

Notice of Proposed Rulemaking

In DOE's Notice of Proposed Rulemaking, published in 63 Federal Register 60268, November 9, 1998, the Department is proposing to amend its acquisition regulations to formally require a performance guarantee under circumstances where a prospective awardee has been created solely for the performance of the instant contract and lacks sufficient financial or other resources to fulfill its obligations under the prospective contract. In circumstances where the newly created entity likely will be dependent upon the resources of the parent organization, this proposal would allow Contracting Officers to consider the resources of the parent in a determination of the newly created entity's responsibility only when the parent provides a performance guarantee or other undertaking satisfactory to the Contracting Officer. While this situation occurs most often in the award of contracts for the management and operation of DOE facilities, this proposal would make a form of performance guarantee necessary whenever these circumstances are encountered.

For further information on this NOPR, or to submit comments, contact Robert Webb at (202) 586-8264.


Gwendolyn S. Cowan
Acting Director

cc: Richard Hopf, MA-5
Ed Lovett, MA-5
Steve Mournighan, MA-52
Ed Simpson, MA-52



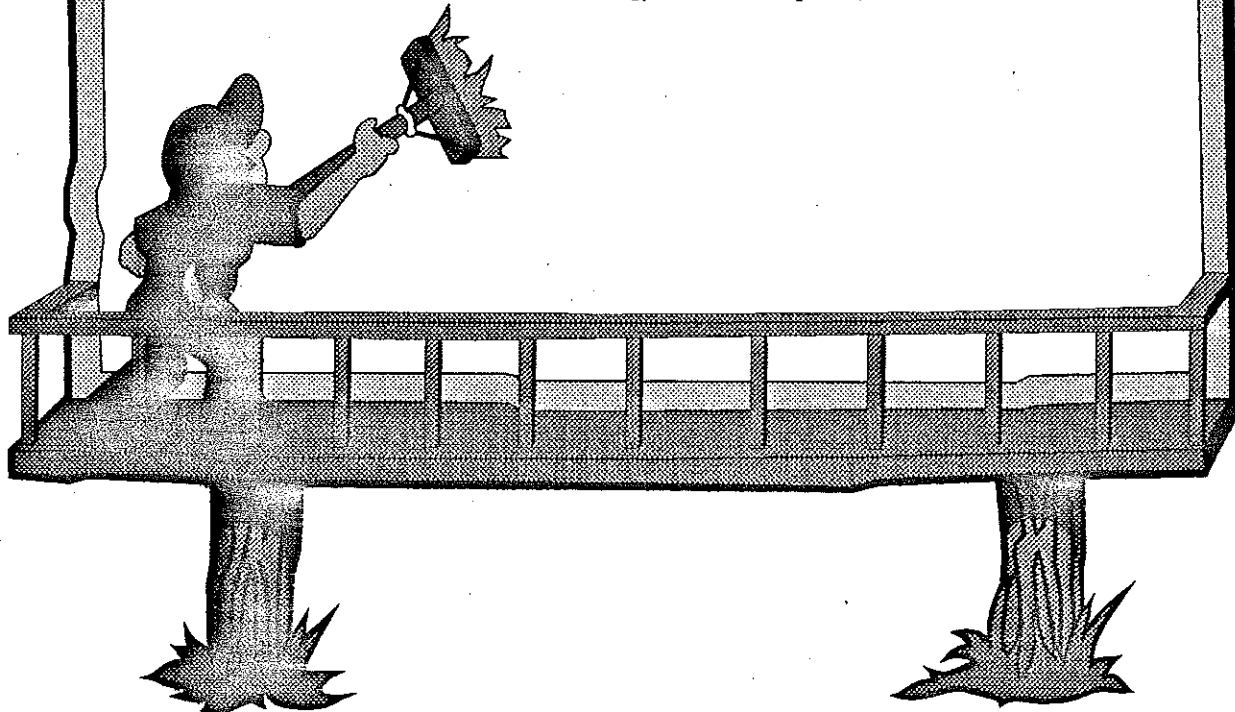
Headquarters Policy Flash

Flash #12

DATE: November 13, 1998
TO: Distribution
FROM: Office of Procurement and Assistance Policy (HR-51)
Office of Procurement and Assistance Management

SUBJECT: Y2K Compliant Information Technology Systems

SUMMARY: Last March a memorandum was issued from the Office of Procurement and Assistance Management to emphasize the importance of aggressively implementing Y2K requirements. The memorandum also provided information regarding the use of special clauses to ensure that agency solicitations and contracts require that information technology be Y2K compliant, or that




Flash # 12

noncompliant information technology be upgraded to be Y2K compliant. More recently, a September 11, 1998 memorandum from the DOE Chief Information Officer and the Procurement Executive, was sent to the Heads of Field Elements to focus particular attention on information technology systems at our major site and facility contractors through the use of contractual performance objectives and, where appropriate, related positive and negative incentives.

Secretary Richardson has also expressed concerns regarding the Department's progress in meeting Y2K objectives. In the attached November 6, 1998 letter, the Secretary stated that the Department needs to significantly increase the effort and attention to the Y2K issue. He also directed several actions which are to be implemented and has tasked the CIO to develop procedures to make them happen.

As the Office of Management and Budget's March 31, 1999 milestone for Y2K compliance fast approaches, it is critical that we do our part to ensure that contracts include appropriate provisions so that mission and nonmission-critical systems are Y2K compliant. Please ensure that appropriate actions have been implemented for contracts under your cognizance.


Gwendolyn S. Cowan
Acting Director

Attachment

cc: Richard Hopf, HR-5
Ed Lovett, HR-5
Steve Mournighan, HR-52
Ed Simpson, HR-52



The Secretary of Energy
Washington, DC 20585

November 6, 1998

**MEMORANDUM FOR PROGRAM SECRETARIAL OFFICERS
CHIEF INFORMATION OFFICER
POWER MARKETING LIAISON OFFICER**

FROM: BILL RICHARDSON

A handwritten signature of Bill Richardson in cursive script.

SUBJECT: Year 2000 Compliance

As I stated when I arrived at the Department of Energy (DOE), my goal is to have DOE recognized as the best cabinet-level department within the government. In reviewing our Departmentwide progress on meeting the Year 2000 (Y2K) compliance objectives, I find that we need to significantly increase the effort and attention to this important issue. Assessments by the Office of Management and Budget and the Congress have identified DOE as consistently behind in making Y2K progress.

Considering that today computer systems are essential to many of our activities, especially protection of environment and health and safety of our workers and the public, we must make Y2K compliance one of our top priorities. Accordingly, I have directed the following responsibilities and actions in this area:

- The Program Secretarial Officers (PSOs) will be responsible for the success of Y2K projects and for overseeing Y2K activities in their respective program areas and will report to me on all mission-critical systems within their purview.
- Funding for other than Y2K efforts for mission-critical computer systems will be withheld until the responsible PSO and the Chief Information Officer (CIO) approve a waiver for meeting the OMB-mandated compliance dates, if those systems are behind in achieving Y2K compliance. For any system that is behind, a PSO review will be conducted to determine what additional resources or mission impact might be necessary to meet the required compliance dates.
- Heads of contracting activities should ensure that all management and operating/integration and other facilities management contracts have been brought into compliance with the September 11, 1998, memorandum from the DOE CIO and Procurement Executive regarding contractor incentives.


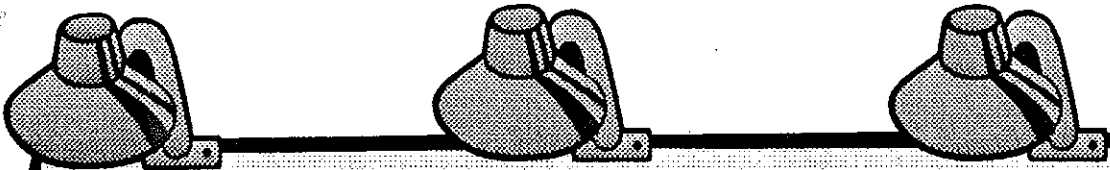


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- All mission-critical systems will have Y2K compliance verified by an external independent organization.
- PSOs will ensure that end-to-end system testing for Y2K will be completed prior to March 31, 1999, and that test plans for these efforts are validated and resources are in place by December 31, 1998.
- Y2K business contingency plans are required to be completed for each mission area and, as appropriate, continuity plans for individual mission-critical systems by December 31, 1998.

I have directed the Chief Information Officer to develop procedures for the above actions.

I ask for your continued personal involvement as we address this critical national issue.



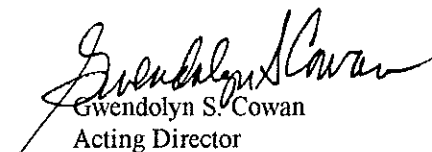
Headquarters Policy Flash

Flash #11

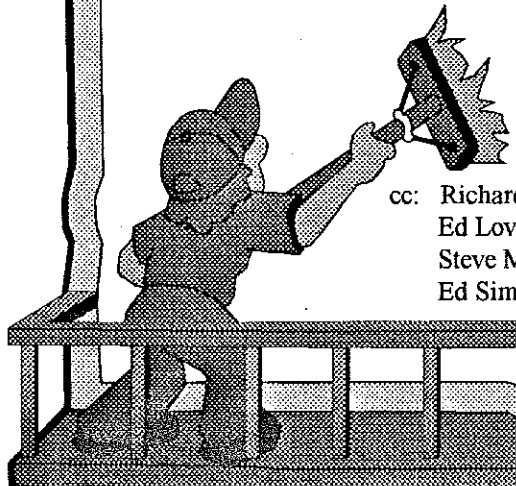
DATE: October 21, 1998
TO: Distribution
FROM: Office of Procurement and Assistance Policy (HR-51)
Office of Procurement and Assistance Management

SUBJECT: Department of Defense A-133 Audit Results

SUMMARY: Attached for your information is a letter from the Inspector General, Department of Defense. The letter provides an Internet address where results of A-133 reviews are posted for institutions under Department of Defense cognizance.



Gwendolyn S. Cowan
Acting Director



cc: Richard Hopf, HR-5
Ed Lovett, HR-5
Steve Mournighan, HR-52
Ed Simpson, HR-52



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

U. S. Department of Energy
Office of Inspector General
ATTN: Single Audit Coordinator
1000 Independence Ave. SW
IG-33, Room 5A-193
Washington, DC 20585

OCT 14 1998

Dear Sir or Madam:

The Office of Management and Budget Circular A-133 requires Federal cognizant agencies to conduct reviews of audit reports prepared under the requirements of the Circular and advise auditors and auditees of any audit report deficiencies. For institutions under Department of Defense cognizance, we previously forwarded printed copies of the results of the reviews to Federal agencies. For audit reports with fiscal years ending on or after June 30, 1997, we will be posting the results of the reviews in the Single Audit section of our Internet web site. We will send a printed copy of the results of our reviews only to the audited institutions. The Internet address is as follows:

<http://www.dodig.osd.mil/audit/apo/main.html>.

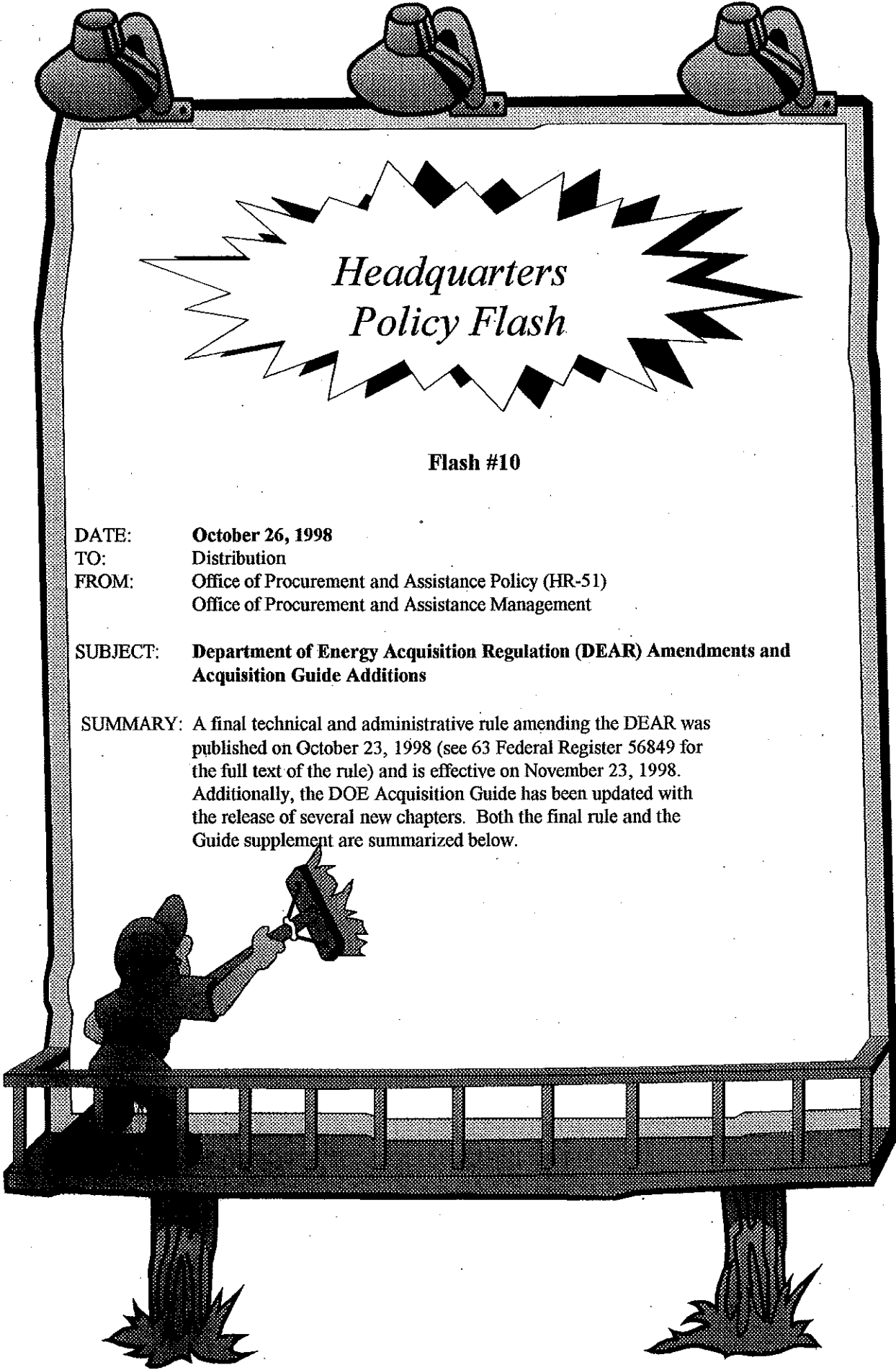
The site also identifies our cognizant and oversight institutions, text of our completed quality control reviews, and links to the Federal Single Audit Clearinghouse.

We hope that this site will be helpful in the administration of your Federal awards. If you have questions, contact Mr. Andrew Katsaros at (703) 604-8741, by fax at (703) 604-9808, or by e-mail at akatsaros@dodig.osd.mil.

Sincerely,

A handwritten signature in cursive script, reading "Donald E. Davis", is positioned above the printed name.

Donald E. Davis
Deputy Assistant Inspector General
Audit Policy and Oversight



Headquarters Policy Flash

Flash #10

DATE: October 26, 1998
TO: Distribution
FROM: Office of Procurement and Assistance Policy (HR-51)
Office of Procurement and Assistance Management
SUBJECT: Department of Energy Acquisition Regulation (DEAR) Amendments and Acquisition Guide Additions

SUMMARY: A final technical and administrative rule amending the DEAR was published on October 23, 1998 (see 63 Federal Register 56849 for the full text of the rule) and is effective on November 23, 1998. Additionally, the DOE Acquisition Guide has been updated with the release of several new chapters. Both the final rule and the Guide supplement are summarized below.

Flash # 10

I. DEAR

In addition to typographical corrections, the rule made the following changes to the regulation:

- Definitions were added to subsection 903.104-3 to implement the Federal Acquisition Regulation, which provides for the use of agency specific definitions to identify government individuals who occupy positions subject to the post-employment restrictions under the Procurement Integrity Act (41 U.S.C. 423). After the Procurement Integrity Act was revised in January 1997, the Department issued interim administrative guidance for identifying its personnel who were subject to the post-employment restrictions. Those definitions, for Program Manager and Deputy Program Manager, are now being incorporated into the acquisition regulation.

Please Note: The Department is developing internal guidance to assist its personnel in determining whether they are covered by the definitions. That guidance will provide for specific identification for individuals who are affected, and for their notification. However, individuals who perform the functions described in the DEAR are subject to the post-employment restrictions even if they do not receive the specific notification. The notification supplements the constructive notice given by this final rulemaking. In addition, the head of an organization may be deemed to be a Program Manager for programs under his or her purview in the event of failure to name an employee to fill a position which meets the definition of Program Manager.

- Part 915 and associated sections in Subpart 970.15 were revised to conform with the recent FAR Part 15 rewrite which addressed contracting by negotiation. The FAR rewrite simplified the acquisition process, made changes in pricing and unsolicited proposal policy, facilitated the acquisition of best value products and services, and revised the sequence in which the information was presented to facilitate use of the regulation. The rulemaking includes a crosswalk reflecting the DEAR numbering changes made within Part 915 and Subpart 970.15.
- Section 935.016, Research opportunity announcements, was removed. This policy, which supplemented FAR coverage for broad agency announcements, is no longer used by the Department. The broad agency announcement policies and procedures of the FAR are being used by DOE.
- Other sections of Part 970 also were revised to conform to recent FAR numbering changes.
- Subsection 970.5204-22 was updated to conform bonding requirements to those at FAR 28.102-1, i.e. the threshold for performance bonds is raised from \$25,000 to \$100,000.

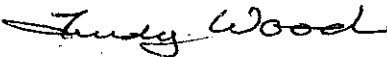
Flash # 10

II. DOE Acquisition Guide


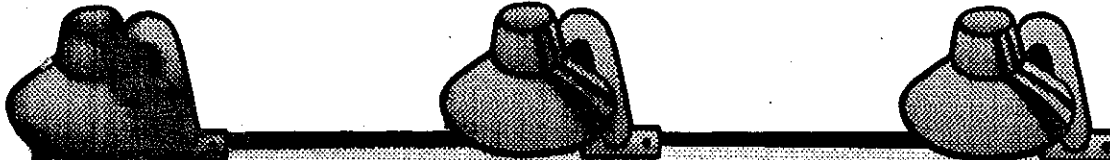
The latest Guide issuance, released and distributed on September 30, 1998, included the following four new sections:

- *Scientific and Technical Information*
This chapter results from an IG report recommendation and provides guidance for including performance objectives and measures for obtaining scientific and technical information in performance-based R&D contracts.
- *Cooperative Audit Strategy*
This chapter provides guidance for administering the internal audit provisions of DEAR 970.5204-9(h). It had formerly been issued as Acquisition Letter 90-3R, but required revisions per an IG request. To expedite its implementation, it was distributed throughout the Department in a memorandum signed by IG-1 and HR-5 on May 11, 1998.
- *Contractor Compensation-Variable Pay*
This chapter contains guidelines for approving M&O contractor variable pay programs.
- *Contractor Insurance*
This chapter results from an IG report recommendation and provides guidance for reviewing and approving M&O contractor insurance programs.

Any questions regarding the final rule and/or the Guide may be addressed to Kevin M. Smith at 202-586-8189 or kevin.m.smith@hq.doe.gov.


for Gwendolyn S. Cowan
Acting Director

cc: Richard Hopf, HR-5
Ed Lovett, HR-5
Steve Mournighan, HR-52
Ed Simpson, HR-52



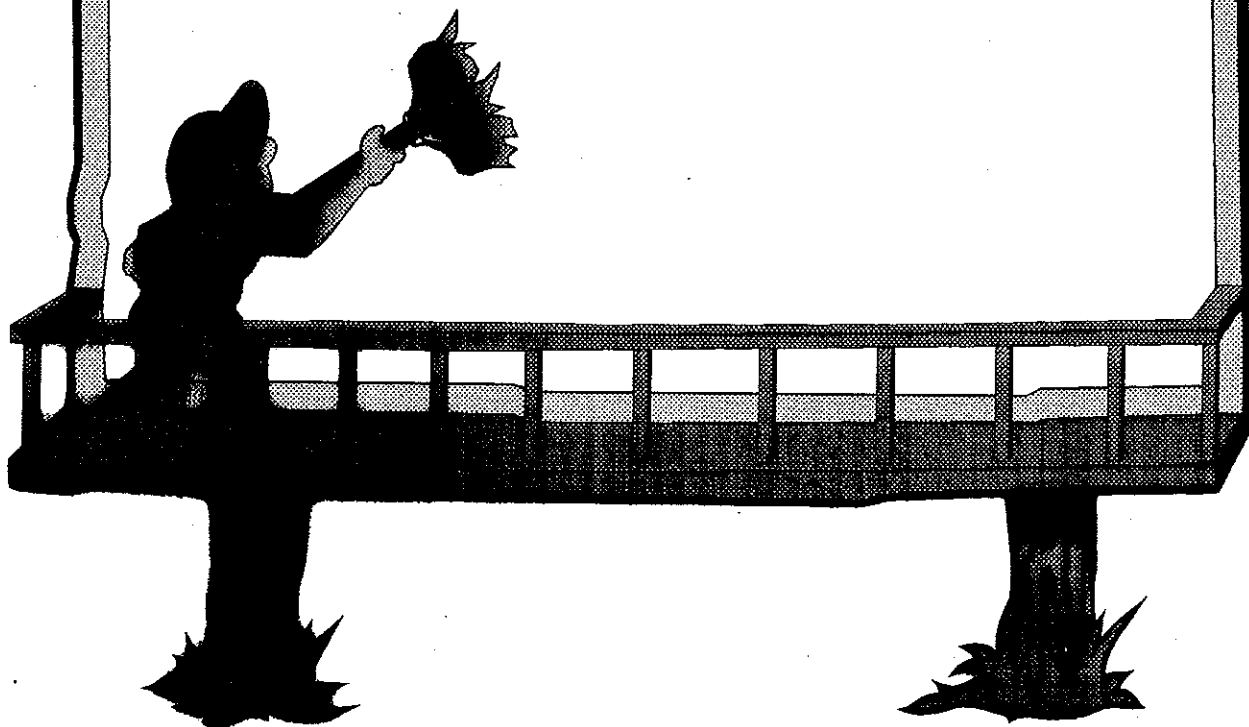
Headquarters Policy Flash

Flash #9

DATE: October 1, 1998
TO: Distribution
FROM: Office of Procurement and Assistance Policy (HR-51)
Office of Procurement and Assistance Management

SUBJECT: **Guidance for Integrated Contractor Cost Certification Process**

SUMMARY: Attached for your information is the revised Statement of Costs Incurred and Claimed recently issued by the Chief Financial Officer. It replaces the previous iteration published April 16, 1996, effective for fiscal year 1996, also titled Statement of Costs Incurred and Claimed.



Flash # 9

The policy is modified to:

- a. Provide a chronological depiction of the process;
- b. Include the Field CFO and Director of Procurement signatures on the cost statement;
- c. Delay Field Manager signature until after the Inspector General audit;
- d. Provide for the Contracting Officer's signature; and
- e. Eliminate prescriptive language on internal processes used to support certifications.

Additionally, the Inspector General has implemented four year cyclical audits of selected contractor's cost statements, as opposed to annual audits. Guidance addressing this aspect is provided at paragraph (b)4 of the attachment.

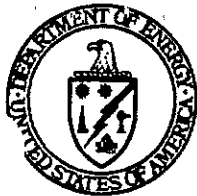
Questions regarding the foregoing may be addressed locally with your Chief Financial Officer and the Inspector General or referred to Terry Sheppard at (202) 586-8193, Fax (202) 586-0545, or e-mail terry.sheppard@hq.doe.gov.



Gwendolyn S. Cowan
Acting Director

Attachment

cc: Richard Hopf, HR-5
Ed Lovett, HR-5
Steve Mournighan, HR-52
Ed Simpson, HR-52



Department of Energy

Washington, DC 20585

August 27, 1998

MEMORANDUM FOR FIELD OFFICE CHIEF FINANCIAL OFFICERS

FROM:

MICHAEL L. TELSON *M. L. Telson*
CHIEF FINANCIAL OFFICER

SUBJECT:

Guidance for Integrated Contractor Cost Certification Process

In fiscal year 1996, the Department's integrated contractors and respective field organizations began following the revised requirements for certifying contractor costs outlined in Chapter 4, paragraph 2c(2) of the "Department of Energy Accounting Handbook." This process replaced the prior Voucher Accounting for Net Expenditures Accrued, or VANEA, with the Contractor Cost Certification Process and the "Statement of Costs Incurred and Claimed." The purpose of this memorandum is to transmit a modification to that policy.

The policy has been modified to: a) provide a chronological presentation to facilitate a better understanding of the process; b) include the Field CFO and Field Director of Procurement signatures directly on the Cost Statement; c) delay Field Manager signature until after Inspector General audit; d) provide for the Contracting Officer's signature; and e) eliminate prescriptive language on internal processes utilized to support certifications.

Additionally, the Inspector General has implemented four year cyclical, rather than annual, audits of selected contractors' cost statements. This revised guidance addresses this issue by providing specific direction to those contractors.

Therefore, the attached guidance for the Contractor Cost Certification Process replaces the requirements of Chapter 4, Paragraph 2c(2) of the "Department of Energy Accounting Handbook." The guidance is effective immediately and should be followed pending formal incorporation into the Accounting Handbook. If you have any questions regarding this change, please contact me or Dean Childs on (301) 903-2551.

Attachment

cc:

Inspector General, IG-1

DAS for Procurement and Assistance Management, HR-5

Deputy General Counsel for Technology Transfer and Procurement, GC-60



(2) **Integrated Contractor Cost Certification Process**

- (a) **Requirements.** DOE Form 2200.1, "Statement of Costs Incurred and Claimed (Cost Statement or Statement)," is prepared and certified by DOE's integrated contractors annually after the contractors' financial statements and related information have been submitted to the cognizant field element (Attachment 4-1). This requirement is contained in DOE acquisition regulations (48 CFR 970.5204-16(e)) as implemented by the appropriate DOE contracting officer. The costs reported on this statement should be consistent with the contractor's financial statements.

- 1 The Statement of Costs Incurred and Claimed is not a payment voucher. It is the contractor's accounting for all costs incurred by the contractor for the period covered by the report. By submission of the form, the integrated contractor summarizes its costs incurred during the year specified, including any materials or services furnished by the Government.
- 2 The form serves as the contractor's claim and certification that the costs have been incurred and (to the best of the Certifying Officials knowledge and belief) are allowable under the contract. Upon audit by DOE's Office of Inspector General (IG) and final approval by DOE, the Cost Statement constitutes a basis for closing appropriate DOE equity balance sheet accounts.

- (b) **Review and Approval of Costs Incurred.** DOE's approval of the Cost Statement as submitted by the integrated contractor constitutes the Department's acknowledgment that the net costs incurred are believed to be allowable under the contract and that those costs have been recorded in the accounts maintained by the contractor in accordance with DOE accounting policies. Approval is completed only after all appropriate signatures have been obtained on the Contractor's Cost Statement. This approval does not relieve the contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to the Department. The process for the submission, review and approval of contractor cost statements is as follows:

- 1 Contractor prepares the Cost Statement and submits it to the DOE Contracting Officer no later than November 15 of each year. The Contracting Officer then distributes copies to: a) the IG so they may begin preliminary audit work; b) the Field CFO; and, c) the Field Director of Procurement (FDP) so they may review the statement and make appropriate attestations.
- 2 The Contracting Officer should obtain the CFO and FDP signatures on a single statement of costs incurred and claimed. The Field CFO thereby attests that the contractor has established a system of accounting controls adequate to minimize the risk of incurring unallowable or unreasonable costs. The FDP thereby attests that the contractor has established a system of procurement controls adequate to minimize the

risk of incurring unallowable or unreasonable costs. The Field CFO and FDP should perform any review/oversight activities necessary to provide them with reasonable assurance that these controls are in place and working as intended. Any allowable cost issues should be referred to the Contracting Officer for resolution.

- 3 Upon obtaining appropriate signatures, the Contracting Officer should forward a copy of the statement to the IG. At this point, the Statement should contain signed attestations by the Contractor, Field CFO and FDP.
- 4 IG will begin audit work on or before receipt of the signed copy of the Cost Statement. In accordance with the revised Cooperative Audit Strategy, the OIG will annually audit the Statements of Costs Incurred and Claimed for the ten contractors who incur the most cost annually. The remaining contractor Statements will be audited by the IG on a four year rotational basis.

Contractors who are not audited annually are still required to prepare and submit annual statements to the Department. Additionally, the Field CFO and FDP should continue to review and sign the statements annually and forward them to the Contracting Officer for distribution to the IG. In the year of audit, the IG will audit and sign the current year's statement along with any prior years statements awaiting audit. The Field manager and Contracting Officer are only required to sign statements which have been audited by the IG.

Additionally, any Field organization that requires audit of their contractor's Statement during a year where audit is not scheduled (i.e. when a contract has not been renewed and is in closeout) may specifically request the OIG to perform the review. The IG will review any such request and will expedite the audit if resources permit. Copies of the current schedule for IG audits of Statements of Costs Incurred and Claimed may be obtained by contacting your Office's regional OIG audit contact.

In the audit of Cost Statements, the IG will:

- a assess the contractor's internal control structure to assure costs claimed and reimbursed by the Department are allowable under the contract; and,
- b assess the work of the contractor's internal audit staff, specifically with regard to the allowability of costs claimed by the contractor.

Upon receipt of the "Statement of Costs Incurred and Claimed" signed by the Contractor, the Field CFO, and FDP, the IG will prepare a final report based on this assessment identifying any reportable conditions and/or IG recommendations. The IG then signs the "Statement of Costs Incurred and Claimed" and forwards the report and signed Cost Statement to the Contracting Officer. Any questioned costs disclosed by the review will be reflected on the Statement.

- 5 Upon receiving a copy of the Contractor's Statement signed by the IG and the accompanying report, the Contracting Officer will research and resolve any cost allowability issues and adjust the Contractor's Cost Statement as appropriate in column B. To the maximum extent practicable, the auditor should be present at any negotiations. (NOTE: The CO is responsible for making the final determinations on the allowability of any questioned costs.) The Contracting Officer shall then sign the Cost Statement and obtain the signature of the Head of Field Element. Once all required signatures are obtained, the Contractor's Statement of Costs Incurred and Claimed is considered "Approved" and final copies should be forwarded to the Contractor, the Field CFO, and the IG.
 - 6 Upon receiving the final "Statement of Costs Incurred and Claimed," the Field CFO ensures that accounting adjustments for disallowed costs and entries to reflect remaining costs as audited are accomplished based on the signed and adjusted Statement.
- (c) Schedule. The schedule for the annual review and approval of the Statement of Costs Incurred and Claimed is as follows:
- | | |
|-------|--|
| 11/15 | Cost Statement submitted by the integrated contractor to the DOE Contracting Officer (The Contracting Officer will also send a copy to IG at this time to expedite IG audit) |
| 12/31 | Contracting Officer forwards copy of the Cost Statement signed by the Field CFO and FDP to the IG |
| 3/01 | IG returns audited Cost Statement and audit report to Contracting Officer |
| 9/30 | Allowable cost issues are resolved and required accounting entries are completed |
- (d) Closing of DOE Equity Balance Sheet Accounts. After audit by the IG and approval by the field element of all or a portion of the contractor's costs for a given period, balance sheet code 8124, Current Year Audited Cost with Integrated Contractors, is credited and balance sheet code 8125, Investment with Integrated Contractors, is debited to reflect the final costs incurred, claimed, and approved. If there are no subsequent adjustments, this entry reflects interim acceptance (subject to later audit) of the contractor's net cost of operations, plus increases (or minus decreases) in noncash assets, minus any increases (plus decreases) in accumulated depreciation and allowances for losses on accounts receivable and inventories. After these entries are made, the balance in balance sheet code 8124 represents the amount of the contractor charges which have not been approved by DOE.

ATTACHMENT 4-1

Statement of Costs Incurred and Claimed under Contract Number _____
for the period beginning _____ and ending _____

	(A) Contractor Costs Claimed	(B) Contracting Officer Adjustments	(C) Total Adjusted Costs
1. Net Cost of Operations	_____	_____	_____
2. Non-Reimbursable Transfers	_____	_____	_____
3. Reconciling Transfers	_____	_____	_____
4. Changes in Assets			
a) Accounts Receivable	_____	_____	_____
b) Inventories	_____	_____	_____
c) Plant & Equipment - Net	_____	_____	_____
d) Prepayments	_____	_____	_____
e) Collateral Funds	_____	_____	_____
f) Other Deposits (explain in footnote)	_____	_____	_____
Costs Incurred and Claimed (Total)	=====	=====	=====

Signatures:

I certify that, to the best of my knowledge and belief, the Costs Incurred and Claimed are allowable and reasonable in accordance with the terms of the subject contract and applicable laws and regulations, subject to audit.

Manager, Management and Operating Contractor

Date

The contractor has established a system of accounting and procurement controls adequate to minimize the risk of incurring unallowable or unreasonable costs. The above statement does not constitute final approval or settlement of costs

<Name> Field Chief Financial Officer Date

<Name> Field Director of Procurement Date

Audit by the Inspector General disclosed \$ _____ questioned costs, subject to future audit.

<Name> Office of Inspector General

Date

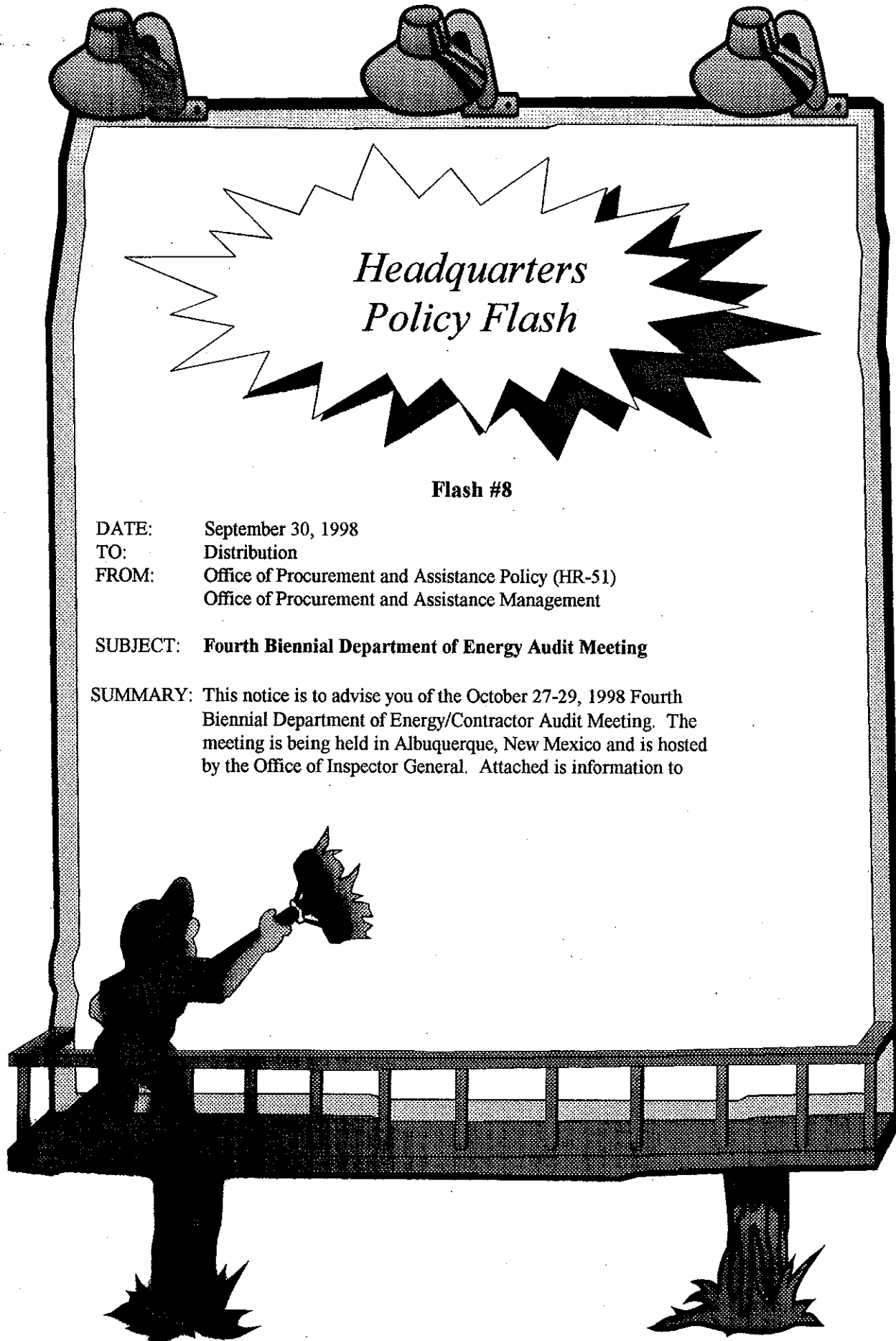
Approved by the U.S. Department of Energy in the Amount of \$ _____ subject to future audit.

<Name> Contracting Officer Date

<Name> Field Manager
or Head of Contracting Activity Date

CHIEF FINANCIAL OFFICERS

Albuquerque Operations Office
Chicago Operations Office
Idaho Operations Office
Nevada Operations Office
Oak Ridge Operations Office
Richland Operations Office
Oakland Operations Office
Savannah River Operations Office
Golden Field Office
Ohio Field Office
Rocky Flats Field Office
Pittsburgh Naval Reactors Office
Schenectady Naval Reactors Office
Strategic Petroleum Reserve Management Office
Federal Energy Technology Center
Naval Petroleum Reserves in California
Naval Petroleum Reserves, Colorado, Utah & Wyoming
Alaska Power Administration
Bonneville Power Administration
Southeastern Power Administration
Southwestern Power Administration
Western Area Power Administration
Office of Scientific & Technical Information
Director, Capital Accounting Center



Headquarters Policy Flash

Flash #8


DATE: September 30, 1998
TO: Distribution
FROM: Office of Procurement and Assistance Policy (HR-51)
Office of Procurement and Assistance Management

SUBJECT: **Fourth Biennial Department of Energy Audit Meeting**

SUMMARY: This notice is to advise you of the October 27-29, 1998 Fourth Biennial Department of Energy/Contractor Audit Meeting. The meeting is being held in Albuquerque, New Mexico and is hosted by the Office of Inspector General. Attached is information to

Flash #8

register for the event. Please disseminate to individuals who would benefit from attending the meeting.


Gwendolyn S. Cowan
Acting Director

Attachment

cc: Richard Hopf, HR-5
Ed Lovett, HR-5
Steve Mournighan, HR-52
Ed Simpson, HR-52



Fourth Biennial Department of Energy Audit Meeting

Crowne Plaza Pyramid Hotel, Albuquerque, NM

October 27, 28, and 29, 1998

Value Added Auditing

Dear Colleague:

You are invited to attend the fourth biennial Department of Energy Audit Meeting, October 27-29, 1998, at the Crowne Plaza Pyramid Hotel in Albuquerque, New Mexico (October 29th is an optional breakout day). The meeting, hosted by the Office of Inspector General in cooperation with the Los Alamos and Idaho National Engineering and Environmental Laboratories, will provide attendees with the tools and knowledge necessary to provide "Value Added Auditing" services. It will also provide the opportunity to explore topics of joint interest and discuss the challenges facing the Department of Energy and its contractor community.

The meeting agenda is attached. As you can see, the speakers and session leaders are best in class, and attendees will receive CPE credit. The hotel rate for the meeting is \$70.00 (tax included). Please make your hotel reservations by contacting the hotel directly at 505-821-3333.

Registration will take place on Monday, October 26th from 5:00 p.m. to 8:00 p.m. and again on Tuesday morning at 7:00 a.m. We will be collecting \$25.00 from each conference attendee to cover the cost of morning and afternoon refreshments for Tuesday and Wednesday. We regret that this is the only way that refreshments can be made available. Checks are to be made to the Crowne Plaza Hotel and will be collected at registration. For your information, the hotel has a daily luncheon buffet available for \$4.99 plus tax.

A tour of the National Atomic Museum is planned for Tuesday evening, October 27th, with a reception and a cash bar. The price for this event is \$15.00 per person and includes transportation, lecture and tour of the Museum, and reception catered by Garduno's restaurant. We hope you will plan to attend.

Please complete the attached registration form and **fax or mail it to Ron Rodriguez** at Los Alamos National Laboratory (address and fax is on the registration form).

We look forward to seeing you at the Conference.

William R. Gibson
Office of Inspector General
202-586-1801
william.gibson@hq.doe.gov

Katherine A. Brittin
Director, Audit and Assessments
University of California
Los Alamos National Laboratory
505-665-3104
brittin_katherine_a@lanl.gov



Fourth Biennial Department of Energy Audit Meeting

Crowne Plaza Pyramid Hotel, Albuquerque, NM

October 27, 28, and 29, 1998

Value Added Auditing

Registration Form

Please register by October 9, 1998!

Name: _____

Title: _____

Organization: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ E-Mail: _____

_____ Yes, I plan to attend the Tuesday evening lecture/
reception.

Ron Rodriguez
Audits and Assessments
Los Alamos National Laboratory
P.O. Box 1663, MS P227
Los Alamos, NM 87545
505 665-7696
Fax: 505 667-8252



Fourth Biennial Department of Energy Audit Meeting

Crowne Plaza Pyramid Hotel, Albuquerque, NM

October 27, 28, and 29, 1998

AGENDA

Tuesday, October 27th

7:30am	Registration	
8:00am	Welcome	Gregory H. Friedman, Acting Inspector General
8:30am	Keynote Address #1	Dr. Ernest J. Moniz, Undersecretary of Energy (Tentative)
9:15am	Keynote Address #2	Franklin G. Peters, Deputy Director, Field Management
10:00am	Break	
10:15am	Panel Discussion Discussion of keynote speaker comments and current status of DOE	Jim Reid, Richard Hopf, James Turner, Anne Davies, Greg Friedman
12:00pm	Lunch	
1:00pm	Reaction to Panel discussion and expectations placed upon them.	Dr. John Browne, Director Los Alamos National Laboratory Dr. John H. Marburger- Brookhaven Lab Director
2:00pm	Advanced Metrics- General Session	Mark Graham Brown
3:00pm	Break	
3:15pm	Advanced Metrics- Continued	Mark Graham Brown
4:30pm	Wrap-up	Lori Miller/Fred Doggett
5:30pm	Network Session at Sandia National Laboratory Museum	Museum Historian



Fourth Biennial Department of Energy Audit Meeting

Crowne Plaza Pyramid Hotel, Albuquerque, NM

October 27, 28, and 29, 1998

Wednesday, October 28th

8:00am	Convening of Conference	Katherine Brittin/Phil Holbrook
8:15am	What's Hot, What's Not	Joel Kramer
10:15am	Break	
10:30am	Panel Discussion Topics of Interest (Attendee questions)	Steering Committee for Quality Auditing
12:00pm	Lunch	
1:00pm	GPRA Task Force Results	
1:30pm	High Impact Auditing	John Hall
3:15pm	Break	
3:30pm	Audit Metrics-M&O break out	John Hall
3:30pm	IG Break-out	
5:00pm	Wrap-up	Lori Miller/ James Turner



Headquarters Policy Flash

Flash #7

DATE: September 30, 1998
TO: Distribution
FROM: Office of Procurement and Assistance Policy (HR-51)
Office of Procurement and Assistance Management


SUBJECT: Federal Acquisition Circular (FAC) 97-08

SUMMARY: On September 30, 1998, the Federal Register published FAC 97-08 (page 52426), effective for solicitations issued on or after October 1, 1998. It provides three new Alternates for Federal Acquisition Regulation (FAR) clauses. These Alternates relate to the small disadvantaged business (SDB) changes promulgated in FACs 97-06 and 97-07. The Alternates are to be used in designated SIC codes where the SDB application is on a Regional basis. For fiscal year 1999 the only SIC codes affected are those dealing with construction.

Flash #7

Information on FAC 97-08 has been added to Ed Lovett's Small Business Program Changes training, which is scheduled to be given on the the following dates:

Oakland (Oct. 5), FETC (Oct. 7), Ohio (Oct. 8), Chicago (Oct. 14), Nevada (Oct. 19), Richland, Oct. 26), Albuquerque Oct. 28), WAPA/Golden/Rocky Flats (Nov. 2), Oak Ridge/Savannah River (Dec.)


Gwendolyn S. Cowan
Acting Director

cc: Richard Hopf, HR-5
Ed Lovett, HR-5
Steve Mournighan, HR-52
Ed Simpson, HR-52



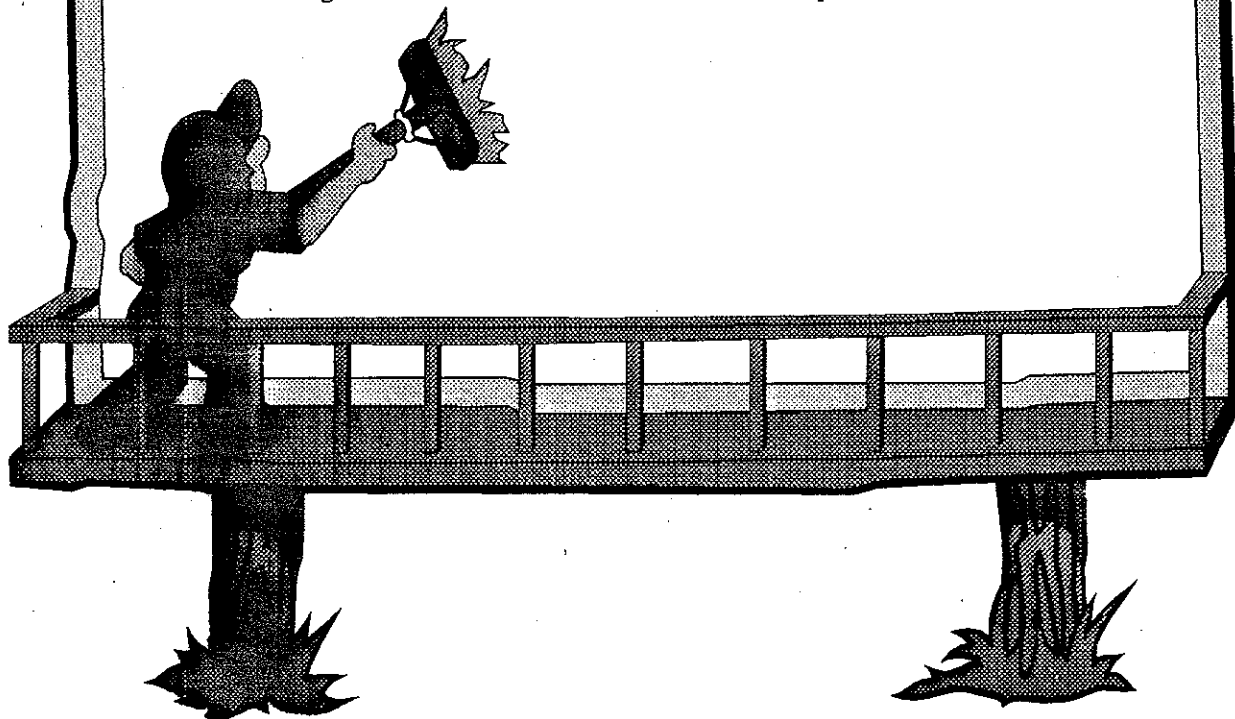
Headquarters Policy Flash

Flash #6

DATE: September 23, 1998
TO: Distribution
FROM: Office of Procurement and Assistance Policy (HR-51)
Office of Procurement and Assistance Management

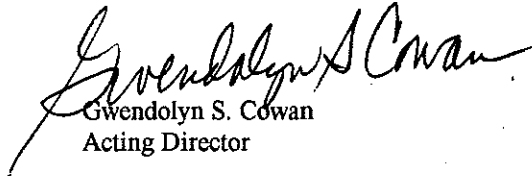
SUBJECT: AL 98-11, Waiver of Synopsis Requirements

On September 18, 1998, Acquisition Letter 98-11 was issued to implement a waiver of the FAR Subpart 5.2 synopsis requirements. The waiver was signed by then Acting Secretary Elizabeth A. Moler and is effective on October 1, 1998. It resulted from a combined effort by the Office of Federal Procurement Policy and Small Business Administration to consider a way for agencies to further streamline smaller dollar acquisitions of services



Flash # 6


and, at the same time, increase opportunities for small business contractors. The AL provides guidance on the circumstances under which the waiver of notice requirements are appropriate.


Gwendolyn S. Cowan
Acting Director

cc: Richard Hopf, HR-5
Steve Mournighan, HR-52
Ed Simpson, HR-52
Ed Lovett, HR-5

Determination to Waive the Synopsis Requirements of Federal Acquisition Regulation (FAR) Subpart 5.2

1. The requirement in FAR Subpart 5.2 to provide widespread notice and, generally, a 45-day notice-and-wait period for all new procurement actions between \$25,000 and the simplified acquisition threshold (SAT) limits the efficiency of DOE's procurement process by requiring the evaluation of a potentially large number of offerors. Many of these offerors may not be highly competitive. As a result, even though small businesses have demonstrated their ability to be competitive for many types of services, the synopsis requirement often makes it unreasonable or inappropriate to take advantage of the services that competitive small business contractors can offer in this dollar range.
2. It is therefore appropriate to waive the notice requirements under the following circumstances:
 - (a) the acquisition is for services (excluding those exempted from set-asides under the Small Business Competitiveness Demonstration Program) in amounts over \$25,000, but not exceeding the SAT, of which supply items are expected to constitute less than 20 percent of the total value of the contract;
 - (b) the acquisition will be set aside for small businesses;
 - (c) quotes or offers will be solicited from a minimum of five small business concerns;
 - (d) SBA's PRO-Net will be used to identify a minimum of five small businesses, which will include, if available, at least one small disadvantaged and one women-owned firm; and
 - (e) if practicable, two sources not included in the previous solicitation for the same services will be solicited.
3. Pursuant to FAR 5.202(b) I hereby determine that the advance notice requirements of FAR Subpart 5.2 are inappropriate and should be waived when the circumstances in paragraph 2 are present. This determination is effective October 1, 1998, subject to consultation with the Administrator of the Office of Federal Procurement Policy and the Administrator of the Small Business Administration.


ELIZABETH A. MOLER
Acting Secretary



ACQUISITION LETTER

AUTHORITY

This Acquisition Letter (AL) is issued by the Procurement Executive pursuant to a delegation from the Secretary and under the authority of the Federal Acquisition Regulation (FAR), Section 1.301(a)(2).

CONTENTS

CITATION

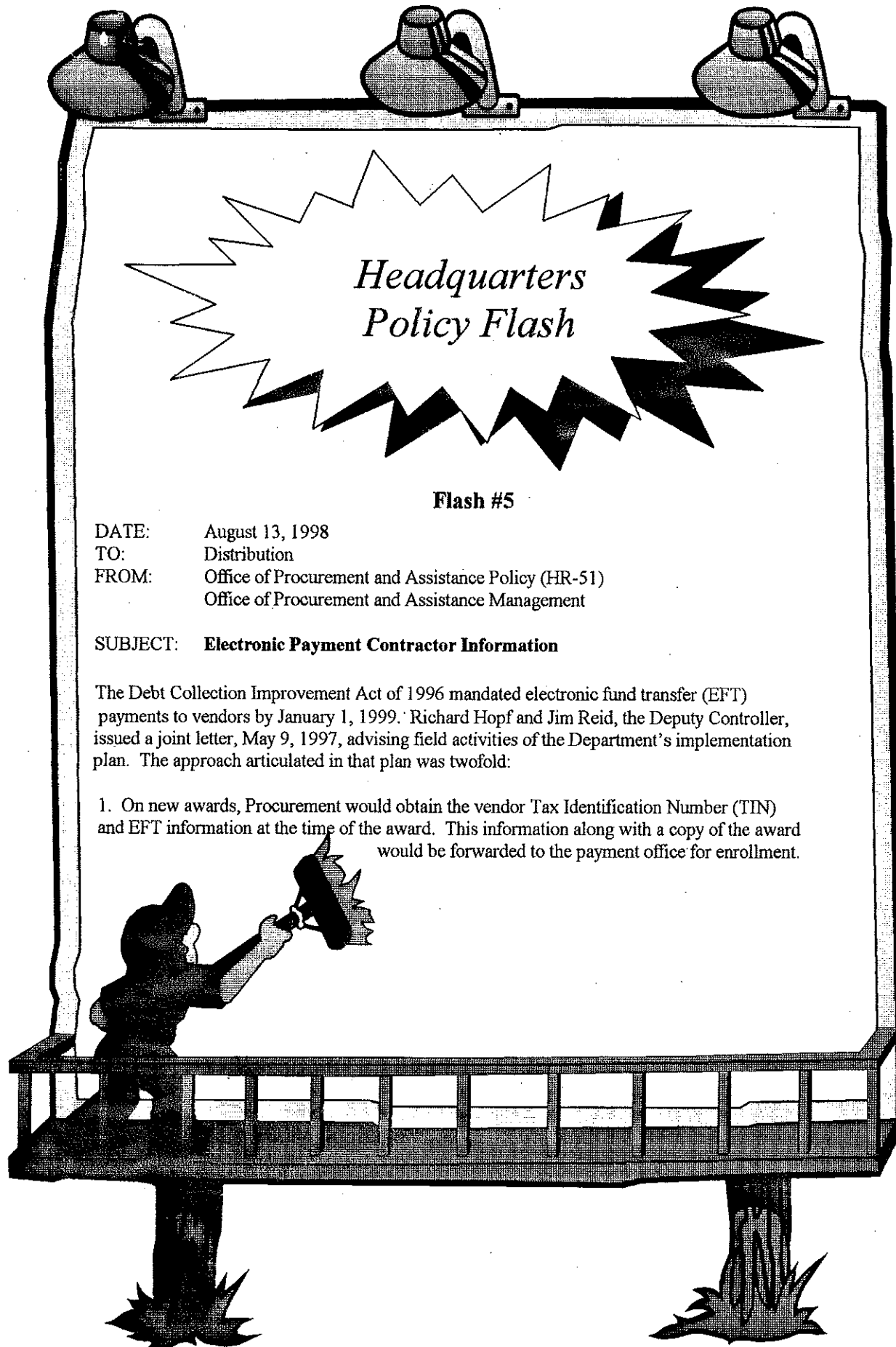
TITLE

FAR 5.2

Synopses of Proposed Contract Actions

Subject: Waiver of Synopsis Requirements

- I. **Purpose.** The purpose of this Acquisition Letter is to implement a waiver of the FAR Subpart 5.2 synopsis requirements for the acquisition of services between \$25,000 and the Simplified Acquisition Threshold (SAT).
- II. **Background.** The Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416) require that Federal Agencies provide the Public advance notice of most acquisitions. These statutory requirements are reflected in Subpart 5.2 of the Federal Acquisition Regulations (FAR). FAR 5.202(b) provides that the synopsis requirements need not be followed if the head of the agency determines in writing, after consultation with the Administrator of the Office of Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable. Such a determination has been made and a copy is attached.
- III. **Guidance.** Contracting activities need not synopsise acquisitions meeting the circumstances in paragraph 2 of the attached determination.
- IV. **Effective Date.** This AL is effective on October 1, 1998.
- V. **Expiration Date.** This AL is effective until canceled or superseded.



Headquarters Policy Flash

Flash #5

DATE: August 13, 1998
TO: Distribution
FROM: Office of Procurement and Assistance Policy (HR-51)
Office of Procurement and Assistance Management

SUBJECT: **Electronic Payment Contractor Information**

The Debt Collection Improvement Act of 1996 mandated electronic fund transfer (EFT) payments to vendors by January 1, 1999. Richard Hopf and Jim Reid, the Deputy Controller, issued a joint letter, May 9, 1997, advising field activities of the Department's implementation plan. The approach articulated in that plan was twofold:

1. On new awards, Procurement would obtain the vendor Tax Identification Number (TIN) and EFT information at the time of the award. This information along with a copy of the award would be forwarded to the payment office for enrollment.

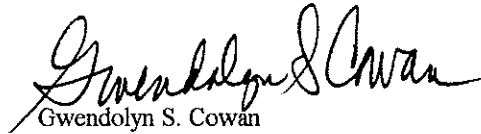
Flash # 5

2. On existing awards, the payment office would obtain the TIN and EFT information as payment requests were presented by the vendors.


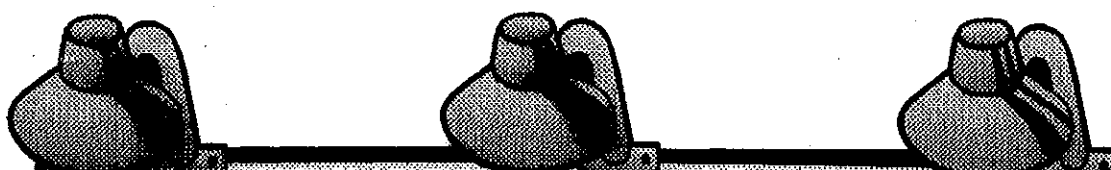
Forms were provided as part of the May 9, 1997 package for use in enrolling vendors.

As a result of the Department's dedicated efforts to meet the EFT mandate approximately 70 percent of vendor payments are now made by EFT. However, there have been lapses in obtaining and providing the enrollment information for new awards to the payment office.

Accordingly, your assistance is requested to ensure that the TIN and EFT information, on new awards, is obtained at the time of award and forwarded to the payment office as part of the award package. Questions regarding the forgoing may be addressed to Terry Sheppard, HR-51, (202)586-8193 or internet address terry.sheppard@hq.doe.gov.


Gwendolyn S. Cowan
Acting Director

cc: Richard Hopf, HR-5
Steve Mournighan, HR-52
Ed Simpson, HR-52
Ed Lovett, HR-5
Jim Reid, CR-2
George Tengan, CR-52
Jean Morgan, CR-42



Headquarters Policy Flash

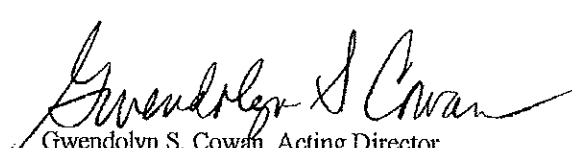
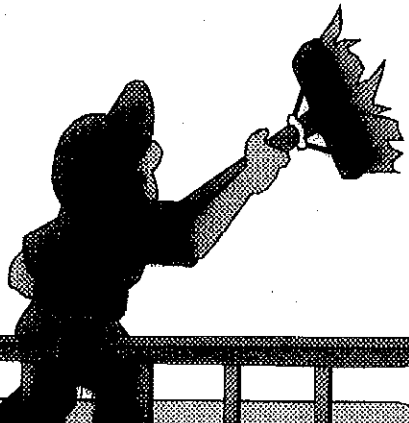
DATE: July 10, 1998
TO: Distribution
FROM: Office of Procurement and Assistance Policy (HR-51)
Office of Procurement and Assistance Management

SUBJ: **SERVICE CONTRACT ACT/ACQUISITIONS OF COMMERCIAL
ITEMS....RECENT DEVELOPMENTS**

Currently, the FAR waives the application of the Service Contract Act (SCA) to subcontracts for the acquisition of commercial items (see FAR 12.504). This waiver was determined by the FAR Council pursuant to the authority granted it under Section 8003 of the Federal Acquisition Streamlining Act of 1994 (FASA). The Department of Labor (DOL) has since challenged the FAR Council's determination on the basis that DOL asserts that it has exclusive authority under the SCA to waive application of the Act. Moreover, DOL has argued that the final rule establishing the waiver in the FAR was invalid as the inclusion of SCA on the list of statutes determined to be inapplicable to subcontracts for the acquisition of commercial items at FAR 12.504 was not subject to public comment, and that the inclusion of SCA on the list violates FASA because the SCA imposes a penalty (debarment/suspension). *Note: §8003(c) of FASA prohibits the inclusion of laws on the list which provide for criminal or civil penalties.*

To resolve this issue, the FAR Council and DOL have agreed to draft a compromise regarding the application of the SCA to acquisitions of commercial items. HR-51 has been monitoring this issue and is providing the attached summary of the draft compromise proposal for your information.

If you would like more information, please contact John Bashista on (202) 586-8192.



Gwendolyn S. Cowan, Acting Director

Draft FAR Council/DOL Compromise Proposal
Waiver of the Service Contract Act for Acquisitions of Commercial Items

- Would apply to prime contracts and subcontracts for services determined to be "commercial" (*regularly sold to public at catalog/market prices*)
- Restricted to certain types of "commercial services" only (e.g., IT, relocation, lodging, installation, transportation, real estate brokerage, financial)
- Contractor must use same compensation plan as is used for its commercial customers (will require contractor certification) - *must have a commercial customer base to qualify for waiver*
- Contractor employees can spend only a "small portion" of time performing on Government contract (avg. of < than 20% of total available hours/month) - no dedicated staff
- Award is based on factors other than price
- DOL to issue proposed rule for public comment; FAR to adopt following DOL final rule (approx. 1 year)

A stylized illustration of a signpost. At the top, three hand-painted figures are visible. The signpost itself is a rectangular board with a jagged, starburst-like border. Inside the board, the text 'Headquarters Policy Flash' is written in a bold, sans-serif font. Below the text, there are three lines of information: 'DATE: July 8, 1998', 'TO: Distribution', and 'FROM: Office of Procurement and Assistance Policy (HR-51) Office of Procurement and Assistance Management'. Further down, the subject line reads 'SUBJ: ADARAND and HUBZone...RECENT DEVELOPMENTS'. Below the subject line, there is a paragraph of text summarizing the ADARAND decision and the publication of two final rules by the SBA. At the bottom of the signpost, a silhouette of a person is shown painting the board with a brush. The signpost is supported by two wooden posts that resemble tree trunks.

Headquarters Policy Flash

DATE: July 8, 1998

TO: Distribution

FROM: Office of Procurement and Assistance Policy (HR-51)
Office of Procurement and Assistance Management

SUBJ: **ADARAND and HUBZone...RECENT DEVELOPMENTS**

SUMMARY: ADARAND: On June 30, 1997, SBA published two final rules (63 FR 125, 35726 and 35767) which implement the ADARAND decision. The rules are effective on various dates between June 30, 1998 and Jan. 1, 1998. The rules (1) amend the eligibility requirements for, and contractual assistance provisions within, the SBA 8(a) Business Development program, and (2) establish the procedural framework for certifying firms as SDBs and for processing protests challenging the disadvantaged status of a firm claiming to be an SDB.

In addition, the FAR Council issued FACs 97-06 and 97-07 which were published as interim rules in the Federal Register on June 30 (63 FR 125, 35719) and July 1, 1998, (63 FR 126, 36119) respectively. FAC 97-06 implements the price evaluation adjustment for SDB concerns, has an effective date of October 1, 1998, and applies to certain solicitations issued on or after October 1, 1998. FAC 97-07 implements the evaluation

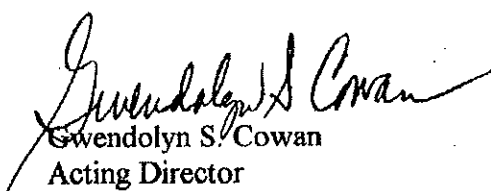


factor or subfactor for SDB participation, incentive subcontracting with SDB concerns, and other coverage that is not directly related to the price evaluation adjustment for SDB concerns. It has an effective date of January 1, 1999, and applies to certain solicitations issued on or after January 1, 1999. Public comments are due on both rules by the end of August.


Also, the application of the FAC 97-06 price evaluation adjustment to various major SIC groups is set forth in a Department of Commerce determination which was published in the Federal Register by OMB on June 30, 1998, on page 35713. The adjustment is 10% in all cases in which it must be applied.

HUBZone: On June 11, 1998, SBA published a final rule in the Federal Register, 63 FR 112, 31896 to implement a new HUBZone Program (known as HUBZone Empowerment Contracting Program). This program will provide federal contracting opportunities for qualified small business concerns located in distressed communities to stimulate economic activity and growth without "adversely affecting recent efforts to streamline and improve the federal procurement process". The FAR policy and procedures are currently under development, therefore its impact and subsequent implementation, in conjunction with the ADARAND rules, are unknown at this time.

NOTE: Ed Lovett is DOE's representative on the FAR Small Business Committee and will participate in developing FAR implementation. Ed can be reached at (202) 586-3166 if you have any questions regarding the status of ADARAND or HUBZone implementation within DOE. We will provide information regarding training or other appropriate guidance as it becomes available.


Gwendolyn S. Cowan
Acting Director

cc: R. Hopf, HR-5
E. Lovett, HR-5
S. Mournighan, HR-52
E. Simpson, HR-52

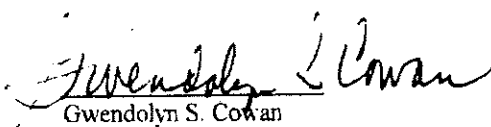


Headquarters Policy Flash

DATE: June 22, 1998
TO: Distribution
FROM: Office of Procurement & Assistance Policy (HR-51)
Office of Procurement and Assistance Management

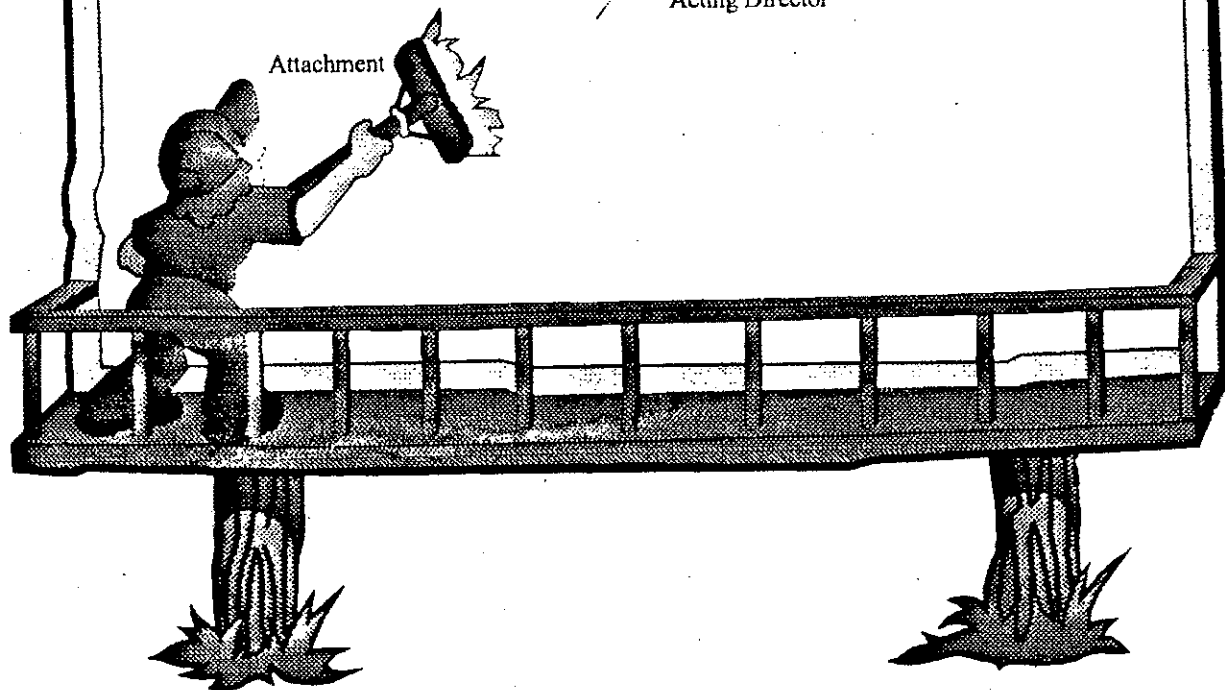
SUBJECT: 8(a) Memorandum of Understanding

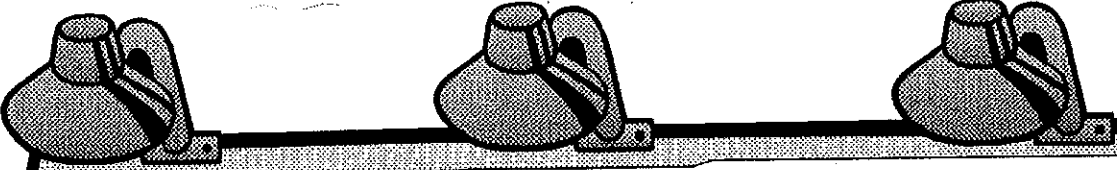
SUMMARY: Attached Acquisition Letter (98-09) implements a Memorandum of Understanding between the Small Business Administration and the Department of Energy to streamline the 8(a) Contracting process. A class deviation to FAR Subpart 19.8 and Part 52 has been approved to allow DOE to contract directly with eligible 8(a) firms.



Gwendolyn S. Cowan
Acting Director

Attachment



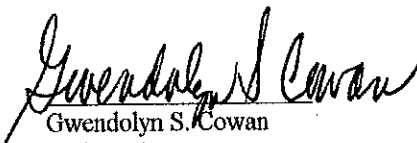


Headquarters Policy Flash

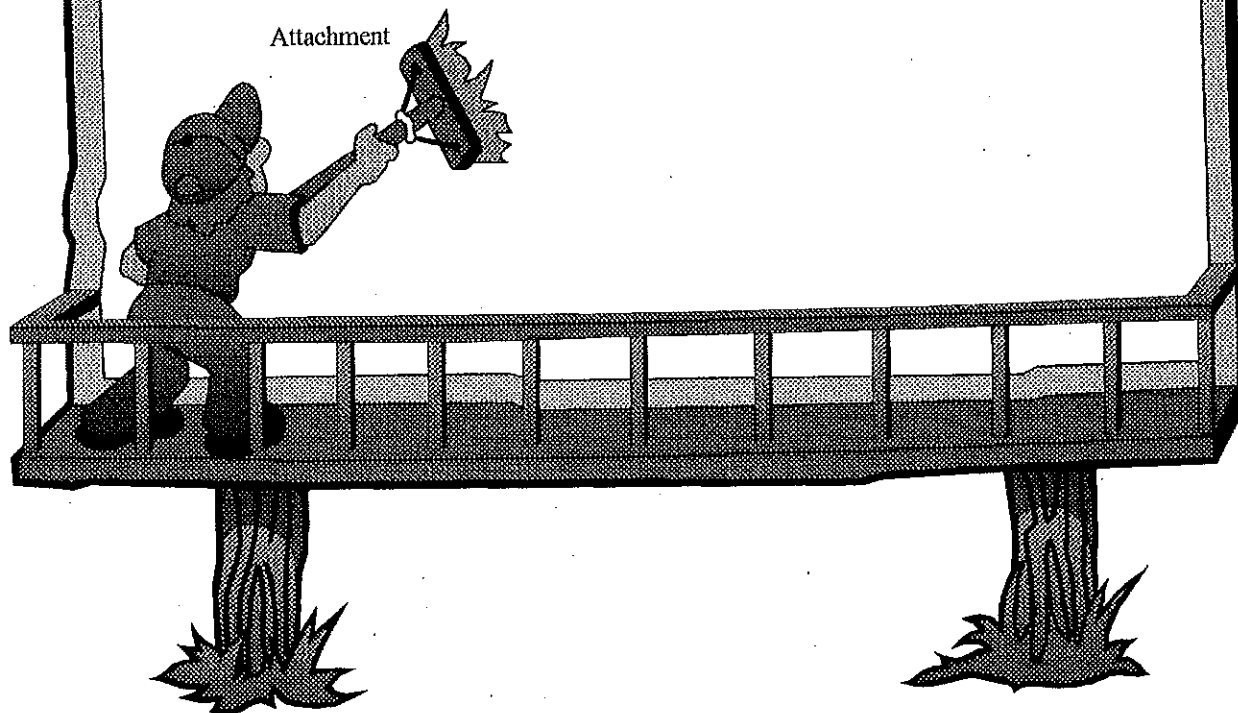
DATE: June 11, 1998
TO: Distribution
FROM: Office of Procurement & Assistance Policy (HR-51)
Office of Procurement and Assistance Management

SUBJECT: AL 98-05R, Guarantee of Performance

SUMMARY: The model agreement in AL 98-05 contained several omissions and it was, therefore, necessary to issue a corrected version. The changes have been made in bold type for ease in identifying the revisions. The date of issuance has not been changed.


Gwendolyn S. Cowan
Acting Director

Attachment



INDEX OF POLICY FLASHES

Fiscal Year 1998

1. Correction to AL 98-05, Performance Guarantees
2. 8(a) MOU
3. ADARAND/HUBZone Developments
4. SCA Developments
5. Electronic Payment Contractor Information
6. AL 98-11, Waiver of Synopsis Requirements
7. Federal Acquisition Circular (FAC) 97-08
8. Fourth Biennial Department of Energy Audit Meeting
9. Guidance for Integrated Contractor Cost Certification Process
10. Department of Energy Acquisition Regulation (DEAR) Amendments and Acquisition Guide Additions
11. Department of Defense A-133 Audit Results
12. Y2K Compliant Information Technology Systems
13. Federal Acquisition Circular (FAC) 97-09 and Notice of Proposed Rulemaking Addressing Performance Guarantees
14. FY 99 Energy and Water Development Appropriations Act (Pub. L. 105-245) and the FY 99 Department of Interior and Related Agencies Appropriations Act (Pub. L. 105-277)
15. Proposed Rule on Financial Management Clauses for Management and Operation Contracts
16. HUBZone Empowerment Contracting